



# CITY OF GARDEN GROVE

## OFFICE OF THE CITY CLERK

*Safeguard all official records of the City.  
Conduct municipal elections and oversee legislative administration.  
Provide reliable, accurate, and timely information to the  
City Council, staff, and the general public.*

**Steve Jones**

Mayor

**Diedre Thu-Ha Nguyen**

Mayor Pro Tem - District 3

**George S. Brietigam**

Council Member - District 1

**John R. O'Neill**

Council Member - District 2

**Patrick Phat Bui**

Council Member - District 4

**Stephanie Klopfenstein**

Council Member - District 5

**Kim Bernice Nguyen**

Council Member - District 6

September 19, 2022

Garden Grove Disposal  
1131 North Blue Gum Street  
Anaheim, CA 92806

Attention: Dan Capener, General Manager

Enclosed is a copy of the fully executed Amended and Restated Exclusive Franchise Agreement by and between the City of Garden Grove, Garden Grove Sanitary District, and Republic Waste Services of Southern California, LLC dba Garden Grove Disposal.

The Franchise Agreement was approved by the Garden Grove City Council and Garden Grove Sanitary District at their meeting held on June 28, 2022.

Sincerely,

Teresa Pomeroy, CMC  
City Clerk

A handwritten signature in black ink, appearing to read 'Liz Vasquez', written in a cursive style.

By: Liz Vasquez  
Deputy City Clerk

Enclosures

c: Finance Department/Purchasing  
Public Works Department

**AMENDED AND RESTATED EXCLUSIVE FRANCHISE  
AGREEMENT**

**BETWEEN**

**CITY OF GARDEN GROVE, GARDEN GROVE SANITARY DISTRICT**

**AND**

**REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC**

**DBA, GARDEN GROVE DISPOSAL**

**FOR**

**RECYCLING, ORGANIC MATERIALS, AND SOLID WASTE  
COLLECTION**

**AND**

**RECYCLING, ORGANIC MATERIALS, AND C&D PROCESSING  
SERVICES**

**JUNE 28, 2022**

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## LIST OF EXHIBITS

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- A. Definitions
- B. Direct Services
  - B1. Single-Family Residential Services
  - B2. Multi-Family Residential Services
  - B3. Commercial Services
  - B4. City And Community Services and Data
- C. Public Education and Outreach Requirements
- D. Initial Maximum Rates
- E. Example Rate Adjustment Formula
- F. Reporting Requirements
- G. Corporate Guaranty
- H. Contractor's Faithful Performance Bond
- I. Notary Certification
- J. Contractor's Implementation Plan and Schedule
- K. Contractor's SB 1383/Initial Outreach Implementation Plan
- L. Discount for Disabled or Low-Income Residents Age 65 or Older
- M. County Waste Disposal Agreement
- N. Facilities List
- O. Documentation of Residential Organics Cost Per Ton

1                   **Amended and Restated Exclusive Franchise Agreement**  
2   **between**  
3                   **City of Garden Grove, Garden Grove Sanitary District**  
4   **And**  
5                   **Republic Waste Services of Southern California, LLC**  
6   **dba, Garden Grove Disposal**  
7

8       THIS AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT (hereinafter "Agreement") is made  
9       and entered into as of June 28, 2022, by and among the CITY OF GARDEN GROVE, a municipal  
10       corporation, the GARDEN GROVE SANITARY DISTRICT, a subsidiary special district formed and existing  
11       pursuant to the Sanitary District Act of 1923, California Health and Safety Code Section 6400 et seq., and  
12       REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC ("Contractor"), a Delaware Limited Liability  
13       Company dba GARDEN GROVE DISPOSAL. The City and District are hereby collectively referred to as  
14       "City." The City, District, and Contractor are hereby collectively referred to as the "Parties."

15   **RECITALS**

16               A.       The Legislature of the State of California, by enactment of the California Integrated  
17       Waste Management Act of 1989 ("AB 939"), has declared that it is in the public interest to authorize and  
18       require local agencies to make adequate provision for Solid Waste Collection within their jurisdictions.

19               B.       The State of California has found and declared that the amount of refuse generated in  
20       California, coupled with diminishing Disposal capacity, potential adverse environmental impacts from  
21       landfilling, and the need to conserve natural resources, have created an urgent need for State and local  
22       agencies to enact and implement an aggressive integrated waste management program. The State has,  
23       through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs  
24       and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016  
25       (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act  
26       of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the  
27       responsible State agency, and all local agencies, to promote Diversion and to maximize the use of  
28       feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of  
29       refuse that must be Disposed.

30               C.       SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid  
31       Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal  
32       reduction targets.

33               D.       SB 1383 requires the City to implement Collection programs, meet Processing Facility  
34       requirements, conduct contamination monitoring, provide education, maintain records, submit reports,  
35       monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has contracted  
36       with Contractor to delegate some of its responsibilities to the Contractor, acting as the City's designee,  
37       through this Agreement.

38               E.       For purposes of this Agreement and the convenience of all Persons, the term "City" shall  
39       mean either or both the City of Garden Grove and/or the Garden Grove Sanitary District. District, being a  
40       subsidiary district as defined in Government Code Section 56078, is governed by City's City Council as



41 the ex officio Board of Directors of District. The terms "City" and "City Council" when used herein  
42 singularly shall refer to the powers, rights, duties, or actions of both City and District, unless the content  
43 indicates otherwise. When both agencies are listed (e.g., City and/or District), there is no legal  
44 distinction intended from the use of the term "City" alone. They are so phrased solely for emphasis.

45 F. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the  
46 City has determined that the public health, safety, and welfare require that an exclusive franchise  
47 agreement be awarded to a qualified Solid Waste enterprise for the Collection of Solid Waste,  
48 Recyclable Materials, and Organic Materials within the City and District Limits.

49 G. District has contracted with Garden Grove Disposal under an exclusive franchise for  
50 Solid Waste Collection services since 1989. Over the years, the franchise agreement has been amended  
51 to include new Recycling programs intended to comply with new State mandates. On May 25, 2010, City  
52 and District, acting as a subsidiary district of City, approved a new franchise agreement for the provision  
53 of Solid Waste handling services with Garden Grove Disposal, a Division of Republic Waste Services of  
54 Southern California, LLC effective July 1, 2010 through June 30, 2024 (the "Prior Agreement"). It is the  
55 intent of the Parties, by entering into this Agreement, to supersede the Prior Agreement, except with  
56 respect to certain continuing obligations as more specifically set forth herein.

57 H. It is the intent of the Parties that Contractor, and not City or District, shall be solely  
58 responsible for establishing and collecting all reasonable charges for Collection services provided by  
59 Contractor pursuant to this Agreement.

60 I. City, District, and Contractor are mindful of the provisions of Federal and State laws  
61 governing the safe Collection, Transport, Recycling, Processing, and Disposal of Solid Waste, including  
62 the California Integrated Waste Management Act of 1989, commonly referred to as AB 939 (California  
63 Public Resources Code Sections 40000, et seq.), the Resource Conservation and Recovery Act of 1976  
64 also known as the Solid Waste Disposal Act (42 USCA Section 6901 et seq.) ("RCRA"), and the  
65 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601  
66 et seq.) ("CERCLA"). City and Contractor desire to leave no doubts as to their respective roles, and to  
67 memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a  
68 "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for"  
69 the Collection, Transport for Disposal, Composting, Processing, and Recycling of municipal Solid Waste in  
70 the City, which may contain Hazardous Waste as defined in Exhibit A. City and Contractor understand  
71 and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste, that City has not,  
72 and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the  
73 Collection Process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend  
74 that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the  
75 absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title  
76 to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of  
77 this Agreement. By entering this Agreement, City and Contractor further desire to confirm that  
78 Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or  
79 intentional Collection, Transportation, and/or Disposal of Hazardous Waste that may occur in  
80 connection with Contractor's performance under this Agreement.

81 J. Contractor has agreed, as part of this Agreement, to provide such services as are  
82 necessary or desirable to ensure City complies with the requirements of AB 939, SB 1383, and other  
83 current or future Federal, State, or local regulations, as amended.

84 K. City desires, among other things, to ensure adequate landfills remain available to meet  
85 the public's need for the safe handling, Processing, and Disposal of Solid Waste, and further desires to  
86 ensure its citizens do not incur undue costs in safely Disposing of Solid Waste they generate, and has  
87 thus entered into the County Agreement. Contractor has agreed, as part of this Agreement, to provide  
88 such services and take such actions as are necessary or desirable to ensure City complies with its  
89 obligations pursuant to the County Agreement.

90 L. The Parties acknowledge the above recitals are true and correct and incorporate them  
91 herein in the Agreement.

## 92 COVENANTS:

93 Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency  
94 of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

## 95 ARTICLE 1. 96 GRANT AND ACCEPTANCE OF FRANCHISE

### 97 1.1 Grant and Acceptance of Franchise

98 By the signing of this Agreement, the City grants to Contractor, and Contractor accepts, this franchise  
99 within the City Limits. The franchise granted to Contractor shall be for the scope of services described in  
100 this Agreement, subject to the limitations described in Section 1.2 and except where otherwise  
101 precluded by Federal, State, and local laws and regulations.

### 102 1.2 Limitations to the Franchise

103 The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic  
104 Materials, Solid Waste, or other materials listed below from being delivered to, and Collected and  
105 Transported by, other Persons, provided that nothing in this Agreement is intended to or shall be  
106 construed to excuse any Person from obtaining any authorization from the City that is otherwise  
107 required by law:

108 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept Source  
109 Separated Recyclable Materials and Source Separated Organic Materials donated from the service  
110 recipient; or, (2) to pay the service recipient for Source Separated Recyclable Materials and Source  
111 Separated Organic Materials provided that there is no net payment made by the service recipient  
112 to such other Person in the form of discounted service fees or otherwise.

113 B. **Self-Hauled Materials.** A Commercial Business Owner or resident may Transport Recyclable  
114 Materials and Organic Materials for Processing if those materials are generated in or on their own  
115 Premises using their own vehicles, equipment, and employees.

116 C. **Construction and Demolition Debris (C&D).** Construction and Demolition Debris that is removed  
117 by a duly-licensed construction or demolition company or as part of a total service offered by said  
118 licensed company or by the City, where the licensed company utilizes its own vehicles, employees,  
119 and equipment.

- 120 D. **Donated or Sold Materials.** Any items that are Source Separated at any Premises by the Generator  
 121 and (a) sold or (b) donated to youth, civic, or charitable organizations. Materials will not be  
 122 deemed donated if they are Collected by a non-franchised waste hauler that is not a 501(c)(3)  
 123 organization.
- 124 E. **Edible Food.** Edible Food that is Collected from a Generator by other Person(s), such as a Person  
 125 from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery;  
 126 or that is Self-Hauled by the Generator to another Person(s), such as a Person from a Food  
 127 Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator  
 128 donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.
- 129 F. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator or  
 130 distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section  
 131 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled  
 132 by another party.
- 133 G. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container  
 134 Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
- 135 H. **Materials Removed by Customer's Contractor as an Incidental Part of Services.** Recyclable  
 136 Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a  
 137 contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential  
 138 clean-out service) as an incidental part of a service being performed at the Premises, rather than  
 139 as a separately contracted or Subcontracted hauling service.
- 140 I. **On-site or Community Composting.** Organic Materials Composted or otherwise legally managed  
 141 at the site where they are generated (e.g., backyard Composting, or on-site anaerobic digestion)  
 142 or at a Community Composting site.
- 143 J. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or  
 144 butcher shops, grease, or used cooking oil.
- 145 K. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash,  
 146 grit, and screenings.
- 147 L. **Excluded Waste.** Excluded Waste regardless of its source.
- 148 M. **Materials Generated by State and County Facilities.** Materials generated by State and County  
 149 facilities located in the City including, but not limited to, the Garden Grove Unified, Westminster  
 150 Unified, and Orange Unified School Districts, provided that the Generator has arranged services  
 151 with other Persons or has arranged services with the Contractor through a separate agreement.

152 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to  
 153 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,  
 154 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other  
 155 Persons are servicing Collection Containers or are Collecting and Transporting Recyclable Materials,  
 156 Organic Materials, and/or Solid Waste in a manner that is not consistent with this Agreement or the  
 157 City's Municipal Code, it shall report the location, as well as the name and phone number of the Person

158 or company to the City Manager or their designee, along with Contractor's evidence. In such case, City  
159 may notify the Generator and Person providing service of Contractor's rights under this Agreement.

160 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,  
161 now and during the Term of the Agreement. If future judicial interpretations of current law, regulations,  
162 or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the  
163 manner and consistent with the provisions of this Agreement, Contractor agrees that the scope of the  
164 Agreement will be limited to those services and materials that may be lawfully included herein and that  
165 the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of  
166 limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the  
167 responsibility of Contractor to minimize the financial impact of such future judicial interpretations or  
168 new laws and the Contractor may meet and confer with City and may petition for a Rate adjustment  
169 pursuant to Section 8.5.

### 170 **1.3 Obligations of Parties**

171 In addition to the specific performance required under the Agreement, City and Contractor shall:

- 172 A. Provide timely notice to one another of a perceived failure to perform any obligations under this  
173 Agreement and access to information demonstrating the Party's failure to perform.
- 174 B. Provide timely access to the City Manager and the Contractor's designated representative and  
175 complete and timely responses to requests of the other Party.
- 176 C. Provide timely notice of matters that may affect either Party's ability to perform under the  
177 Agreement.

### 178 **1.4 Acceptance of Agreement; Waiver of Terms**

179 Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor  
180 waives Contractor's right to challenge the terms of this Agreement under Federal law, State law, local  
181 law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of  
182 the City under any prior grant of franchise, contract, license, or permit issued or granted by any  
183 governmental entity including any right under Section 49520 of the Public Resources Code. Additionally,  
184 by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior  
185 Agreement as of the Effective Date; however, nothing contained in this provision is intended to or shall  
186 relieve Contractor from any obligation existing under the Prior Agreement pertaining to insurance,  
187 indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide  
188 service pursuant to the terms thereof), or from any obligation set forth in the Prior Agreement which  
189 are called out as surviving the termination thereof, and all such obligations, including specifically those  
190 indemnification obligations relating to Excluded Waste, general liability, and AB 939 shall survive the  
191 termination of the Prior Agreement. As of the Effective Date of this Agreement, neither City nor  
192 Contractor is aware of any claim for breach or default of the terms of the Prior Agreement either may  
193 have.

194  
195

## ARTICLE 2. TERM OF AGREEMENT

---

### 196 2.1 Term and Option to Extend

197 A. **Term of Agreement.** The Term of the services to be performed by Contractor under this  
198 Agreement shall be ten (10) years, commencing at midnight July 1, 2022, and expiring at midnight  
199 June 30, 2032, subject to extension as provided herein. Notwithstanding the foregoing, the  
200 unexcused failure or refusal of Contractor to perform any material term, covenant, obligation, or  
201 condition contained in this Agreement shall give rise to the right, in favor of City, for earlier  
202 termination of this Agreement for cause in accordance with the procedures elsewhere contained  
203 herein.

204 B. **Mutual Option to Extend.** City and Contractor may, by mutual agreement, extend the Term of the  
205 Agreement for an additional five (5) years at the end of the initial ten (10) year term defined in  
206 Section 2.1.A. The mutual option to extend may be exercised by written amendment to this  
207 Agreement no sooner than five (5) years prior to the expiration of the initial term described in  
208 Section 2.1.A and no later than two (2) years prior to the expiration of the initial term defined in  
209 Section 2.1.A.

210 C. **City Option to Extend.** City, in its sole discretion, may authorize an extension (“Extension Period”)  
211 of up to thirty-six (36) months. The Extension Period shall be on a month-to-month basis. During  
212 the Extension Period, and in addition to rights of termination set forth elsewhere in this  
213 Agreement, this Agreement may be terminated by City at any time, without cause, if City gives  
214 Contractor a ninety (90) day written notice of termination. City may, upon ninety (90) days’  
215 advance written notice to Contractor prior to expiration of the Term of Agreement as defined in  
216 Section 2.1.A, or prior to the expiration of an extended term by mutual agreement under Section  
217 2.1.B, exercise the thirty-six (36) month extension option. If City provides this extension notice,  
218 then the Agreement Term will automatically renew on a month-to-month basis, up to a total of  
219 thirty-six (36) months, unless earlier terminated pursuant to this Agreement.

### 220 2.2 Conditions to Effectiveness of Agreement

221 The obligation of City to permit this Agreement to become effective and to perform its undertakings  
222 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which  
223 may be waived, in written form only, in whole or in part by City.

224 A. **Accuracy of Representations.** All representations and warranties made by Contractor and set  
225 forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this  
226 Agreement.

227 B. **Furnishing of Insurance, Bond, Letter of Credit, and Corporate Guarantee.** Contractor shall have  
228 furnished evidence of the insurance and Surety required by Sections 9.2 and 9.3 hereof, and shall  
229 comply with all ongoing requirements relating thereto, and shall provide the Corporate Guarantee  
230 required by Exhibit G hereof.

231 C. **Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there  
232 is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or

233 governmental authority, commission, board, agency, or instrumentality decided, pending, or  
 234 threatened against Contractor or Republic Services, Inc. wherein an unfavorable decision, ruling,  
 235 or finding in any single case or in the aggregate, would:

- 236 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
- 237 2. Adversely affect the validity or enforceability of this Agreement; or,
- 238 3. Have a material adverse effect on the financial condition of Contractor, or any surety or  
 239 entity guaranteeing Contractor's performance under this Agreement.

240 D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation  
 241 of all Approved Facilities owned or operated by Contractor, Republic Services, Inc., or any  
 242 Subcontractor for use under the terms of this Agreement.

243 E. **Payment of Fees and Costs.** Contractor shall have made payment to City of all fees, costs, and  
 244 other payments due as of the Effective Date as more fully set forth in Section 7.4.

### 245 **2.3 Delegation of Authority**

246 The administration of this Agreement by the City shall be under the supervision and direction of the City  
 247 Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by  
 248 the City Manager, or his or her designee.

## 249 **ARTICLE 3.** 250 **SCOPE OF AGREEMENT**

### 251 **3.1 Summary Scope of Services**

252 The Contractor or its Subcontractor(s) shall be responsible for the following:

253 A. Providing a program for the separate Collection of Recyclable Materials, Organic Materials, and  
 254 Solid Waste generated by and placed for Collection by Customers pursuant to the requirements of  
 255 Article 4 and Exhibit B.

256 B. Transporting Collected materials to the appropriate Approved Facilities or Designated Disposal  
 257 Facilities pursuant to requirements of Article 4 and Exhibit B;

258 C. Processing Collected Recyclable Materials and Organic Materials at the appropriate Approved  
 259 Facilities pursuant to the requirements of Article 4 and Exhibit B;

260 D. Performing all other services required by this Agreement including, but not limited to, Customer  
 261 billing, public education, Customer service, contamination monitoring, record keeping, and  
 262 reporting pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and F  
 263 (Reporting);

264 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all  
 265 other items and services necessary to perform its obligations under this Agreement;

- 266 F. Paying all expenses related to provision of services required by this Agreement including, but not  
267 limited to, taxes, regulatory fees (including City Fees and Reimbursements), and utilities;
- 268 G. Performing or providing all services necessary to fulfill its obligations in full accordance with this  
269 Agreement at all times using best industry practice for comparable operations; and,
- 270 H. Complying with all Applicable Laws.

271 The enumeration and specification of particular aspects of service, labor, or equipment requirements  
272 shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its  
273 obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere  
274 in the Agreement, unless excused in accordance with Section 11.7.

### 275 3.2 City's Flow Control Option/County Agreement

276 A. **Flow Control Option.** City shall have the absolute ability to choose the location for the delivery  
277 and/or Disposal of all Solid Waste (including Recyclable Material, Organic Materials, and  
278 Construction and Demolition Debris) Collected pursuant to this Agreement (hereinafter City's  
279 "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for  
280 Disposal of Solid Waste hereunder and waives any and all rights to challenge City's ability to do so  
281 including, without limitation, any rights under the Commerce Clause of the United States  
282 Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control  
283 Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County  
284 landfill system in a manner consistent with its obligations under the County Agreement (including,  
285 without limitation, its obligations related to Solid Waste that is delivered to a Processing/Transfer  
286 Facility prior to being delivered to a landfill for Disposal), and Contractor has agreed to handle all  
287 Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control  
288 Option as noted above. At any time during the Term of this Agreement, the City Manager may  
289 notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the  
290 event City so notifies Contractor of its desire to cease exercising its Flow Control Option,  
291 Contractor shall have the absolute discretion to utilize any Disposal Facility, Transfer station,  
292 Recycling facility, material recovery facility, landfill, or other facility of its choosing to retain,  
293 Recycle, Process, and Dispose of Solid Waste generated within the City, provided the use of such  
294 facility by Contractor enables it to meet all other requirements of this Agreement.

295 1. **Organic Materials Flow Control Option.** Contractor will deliver Organic Materials  
296 Collected from the City's Customers to the Approved Organic Materials Processing  
297 Facilities included in Exhibit N.

298 The City retains the right, if so desired, under Section 3.2.A of the Agreement, Flow  
299 Control Option, to have the absolute ability to choose the location for the delivery of  
300 Organic Materials, and that the Rate paid by the ratepayer will be reduced or increased  
301 accordingly if the Transportation and Processing costs of using such facility are lower or  
302 higher than the costs of using the Approved Organic Materials Processing Facilities  
303 included in Exhibit N.

304 The current Customer Rates to Divert Residential Organic Materials are based on an  
305 Organic Materials Transportation and Processing cost per Ton fee of one hundred fifteen  
306 dollars and forty-nine cents (\$115.49) per Ton as documented in Exhibit O. The total cost

307 of one hundred fifteen dollars and forty-nine cents (\$115.49) per Ton is an average of the  
308 Transfer, Transportation, and Processing cost per Ton originating at the Anaheim CVT  
309 Transfer Station for the Approved Organic Materials Processing Facilities to Process  
310 Residential Organic Materials included in Exhibit N.

311 Contractor will notify the City in connection with its regular annual Rate adjustment  
312 effective July 1 of each year if a lower cost option becomes available to Divert the Organic  
313 Materials to initiate a cost reduction to the City's Customers.

314 B. **County Agreement.** Contractor expressly acknowledges its awareness and understanding of the  
315 County Agreement that has been adopted and entered into by City. Moreover, Contractor  
316 acknowledges that it has had an opportunity to review the County Agreement (Exhibit M) and is  
317 aware of the provisions thereof that require all Solid Waste Collected in the City and District Limits  
318 to be Disposed of in the Orange County landfill system. Contractor further acknowledges that the  
319 County of Orange is an intended third-party beneficiary of Contractor's obligations relating in any  
320 way to the Disposal of Solid Waste pursuant to this Agreement and the County Agreement.  
321 Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement  
322 that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and  
323 warrants that it can and will perform its duties in connection with this Agreement in such a  
324 manner as to ensure that City does not breach the terms of the County Agreement as a result of  
325 Contractor's actions or inaction. In the event City advises Contractor in writing that the County  
326 Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in  
327 a manner consistent with the County Agreement, then Contractor's obligations pursuant to this  
328 paragraph shall be terminated.

### 329 **3.3 Use of Approved and Designated Facilities**

330 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,  
331 agrees to use the Approved and Designated Facilities, included in Exhibit N, for the purposes of  
332 Transferring, Processing, and/or Disposing of all Recyclable Materials, Organic Materials, and other  
333 materials Collected in the City. Use of a facility must be approved, in writing, by the City prior to use  
334 consistent with the requirements of Article 4. Such decision by Contractor in no way constitutes a  
335 restraint of trade notwithstanding any Change in Law regarding Flow Control limitations or any  
336 definition thereof.

### 337 **3.4 Subcontracting**

338 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of  
339 Recyclable Materials, Organic Materials, or Solid Waste services without the prior written consent of  
340 City Manager and/or City Council. As of the Effective Date of this Agreement, City has approved  
341 Contractor's use of those Subcontractors identified by Contractor. If the Contractor plans to engage  
342 affiliated or Related Party Entities in the provision of services, Contractor shall provide City Manager  
343 with thirty (30) days' written notification of its plans and provide an explanation of any potential impacts  
344 related to the quality, timeliness, or cost of providing services under this Agreement. All insurance  
345 documents must be reviewed and approved by the City's Risk Manager prior to City acceptance.  
346 Contractor shall require that all Subcontractors file insurance certificates with the City, name City as an  
347 additional insured, and comply with all material terms of this Agreement.



**348 3.5 Responsibility for Materials**

349 Once Recyclable Materials, Organic Materials, and/or Solid Waste are placed in the Contractor's  
350 Containers and at the Collection location, the responsibility for their proper handling shall transfer  
351 directly from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can  
352 identify the Generator pursuant to Section 5.8.B. Once Recyclable Materials, Organic Materials, and/or  
353 Solid Waste are deposited by Contractor at the appropriate Approved Facility, such materials shall  
354 become the responsibility of the Owner or operator of the Approved Facility except for Excluded Waste  
355 pursuant to Section 5.8.C.

356 Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain  
357 with the Contractor if it cannot identify the Generator, and Contractor shall assume all responsibility for  
358 its proper Disposal.

**359 3.6 City-Directed Changes to Scope**

360 City may require a proposal from Contractor to establish the scope of any modification to existing  
361 services (which may include use of Approved Facilities) or additional services to be provided under this  
362 Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City's request  
363 unless an alternate schedule is mutually agreed-upon, a written proposal to provide such modified or  
364 additional services. City shall review the Contractor's proposal for the change in scope of services. City  
365 and Contractor may meet and confer to negotiate Contractor's proposed revisions and costs and shall  
366 amend this Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope. If the City  
367 and Contractor are unable to agree on terms and conditions, including compensation adjustments, of  
368 such services within ninety (90) calendar days from City's receipt of Contractor's proposal for such  
369 services, the City may permit other Persons to provide such services. Nothing herein shall prevent the  
370 City from soliciting cost and operating information from other Persons in order to inform the City's  
371 evaluation of Contractor's proposal.

372 At any time during the Term of this Agreement, the City may solicit proposals from other Persons for  
373 new services beyond those services included in Contractor's grant of exclusive franchise and the scope  
374 of services set forth in Article 4 of this Agreement. The Contractor shall be offered the opportunity to  
375 match any other Person's proposed pricing and retain the added scope of services. However, nothing in  
376 this Agreement shall prevent the City from contracting with other Persons in the event that Contractor is  
377 unable or unwilling to provide such new services at or below the cost proposed by the other Person.

**378 ARTICLE 4.**  
**379 SCOPE OF SERVICES**

380 Contractor shall perform the Recyclable Materials, Organic Materials, Solid Waste, and Bulky Item  
381 services described in this Article 4, for any Customer in the City that subscribes to Contractor's  
382 Collection services. Contractor's Collection services shall be offered to any Customer that places  
383 Containers in a public right-of-way or that provides a waiver for Contractor to access the private road(s)  
384 where Customer places its Containers.

385 This Article 4 describes the general requirements for the services to be provided. More specific  
386 requirements for how each service shall be provided to each Customer Type are described in Exhibit B.

387 Failure to specifically require an act necessary to perform the service does not relieve Contractor of its  
388 obligation to perform such act.

#### 389 **4.1 Recyclable and Organic Materials**

390 A. **Collection.** Contractor shall provide Recyclable and Organic Materials Collection services as  
391 described in Exhibit B.

392 B. **Transfer.** Contractor plans to Transport Recyclable and Organic Materials to the Approved  
393 Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into  
394 large-capacity vehicles and Transported to the Approved Processing Facilities. Contractor shall  
395 keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full  
396 regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or  
397 notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to City  
398 Manager. If the Contractor is unable to use the Approved Transfer Facility, then the Contractor  
399 shall be responsible for making other Transportation arrangements. In such event, Contractor  
400 shall not be compensated for any additional costs. If the Contractor plans to change its Transfer  
401 method, Contractor shall obtain written approval from the City prior to making the change.

402 C. **Processing.** Contractor shall Transport and deliver all Customer-generated Source Separated  
403 Recyclable Materials placed in Recyclable Material Containers to the Approved Recyclable  
404 Materials Processing Facility and Source Separated Organic Materials placed in Organic Material  
405 Containers to the Approved Organic Materials Processing Facility. All tipping fees and other costs  
406 associated with Transporting to, and Processing of, such Recyclable and Organic Materials at the  
407 Approved Processing Facilities and Disposing of the Residue as required in Section 4.1.1 below shall  
408 be paid by Contractor.

409 D. **Capacity Guarantee.** Contractor guarantees sufficient capacity at the Approved Processing  
410 Facilities to Process all Source Separated Recyclable and Organic Materials Collected by Contractor  
411 under this Agreement throughout the Term of the Agreement.

412 E. **Compliance with Regulatory Requirements and Applicable Law.** Contractor shall keep all existing  
413 permits and approvals necessary for use of the Approved Processing Facilities in full regulatory  
414 compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of  
415 violations (obtained from its Processing Facility Subcontractor if necessary) to City Manager.

416 F. **Notification of Emergency Conditions.** Each Approved Facility or the Designated Disposal Facility  
417 shall notify the City of any unforeseen operational restrictions that have been imposed upon the  
418 Facility by a regulatory agency or any unforeseen equipment or operational failure that would  
419 temporarily prevent the Facility from Processing the Discarded Materials Collected under this  
420 Agreement.

421 G. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If Contractor is unable to use  
422 the Approved Processing Facility due to an event that meets the requirements for excusing  
423 Contractor from performance of this specific obligation as described in Section 11.7, Contractor  
424 shall use an alternative Processing Facility provided that the Contractor provides written notice to  
425 City Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the  
426 Contractor shall provide a written description of the reasons the use of the Approved Processing  
427 Facility is not feasible, and the period of time Contractor proposes to use the alternative

428 Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such  
429 time as the City Manager is able to consider and respond to the use of the proposed alternative  
430 Processing Facility. If the use of the proposed alternative Processing Facility is anticipated to or  
431 actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such  
432 Processing Facility shall be subject to approval by the City Manager. The City Manager may, in  
433 their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the  
434 use of the proposed alternative Processing Facility. If the City disapproves the use of the proposed  
435 alternative Processing Facility, the Parties shall meet and confer to determine an acceptable  
436 Processing Facility.

437 If the use of an alternative Processing Facility is for reasons within Contractor's or its Processing  
438 Facility Subcontractor's control, Contractor's Compensation shall not be adjusted for any change  
439 in Transportation and Processing costs associated with use of the alternative Processing Facility.  
440 However, if the use of an alternative Processing Facility is due to an uncontrollable circumstance  
441 or other reasons beyond Contractor's or its Subcontractor's control, then Contractor may adjust,  
442 either up or down, Contractor's Compensation for changes in Transportation and Processing costs  
443 associated with the use of the alternative Processing Facility. In the event that the change in the  
444 Processing Facility results in increased costs, City may identify and direct Contractor to an  
445 alternative Processing Facility, at the Contractor's expense, that results in less cost than the  
446 Contractor-identified alternative.

447 Except for the emergency conditions described in this Section 4.1, Contractor shall not change its  
448 selection of the Approved Processing Facilities without City's written approval, which may be  
449 withheld in the City's reasonable discretion. If Contractor elects to use a Processing Facility that is  
450 different than the initial Approved Processing Facilities, it shall request written approval from the  
451 City Manager sixty (60) calendar days prior to use of the site and obtain City's written approval no  
452 later than ten (10) calendar days prior to use of the site. Failure to meet the requirements of this  
453 Section 4.1 shall result in Liquidated Damage as identified in Section 11.6.

454 Contractor shall observe and comply with all regulations in effect at the Approved Processing  
455 Facilities and cooperate with and take direction from the operator thereof with respect to delivery  
456 of Recyclable and Organic Materials. Contractor shall actively work with the Approved Processing  
457 Facility operators throughout the Term of this Agreement to ensure that contamination of the  
458 Recyclable and Organic Materials Collected under this Agreement and delivered to the Processing  
459 Facility remains below the limits established by Applicable Law including, without limitation, SB  
460 1383.

461 H. **Marketing.** The Contractor shall be responsible for marketing Recyclable Materials and Organic  
462 Materials Collected in the City that are delivered for Processing at the Approved Processing  
463 Facilities. Contractor's marketing strategy shall promote the highest and best use of materials  
464 presented in the waste management hierarchy established by AB 939. Where practical, the  
465 marketing strategy should include use of local markets for Recyclable and Organic Materials.

466 I. **Residue Disposal.** Residue from the Processing of Recyclable and Organic Materials Collected  
467 under this Agreement at the Approved Processing Facilities that cannot be marketed, shall be  
468 Disposed of by Contractor, or the Processing Facility Subcontractor. Residue delivered for Disposal  
469 shall not include any Excluded Waste.

470 J. **Compostable Plastics.** If Compostable Plastics are accepted at the Approved Organic Materials  
471 Processing Facility, Customers may place Compostable Plastics in the Organic Materials Container  
472 for Collection, including Compostable Plastic bags used by Customers to contain Food Waste prior  
473 to placement in the Organic Materials Container for Collection. Contractor may prohibit use of  
474 Compostable Plastics in Organic Material Containers. Contractor shall Collect and Transport such  
475 materials for Processing at the Approved Organic Materials Processing Facility. At least six (6)  
476 months prior to the commencement of the Agreement, and annually thereafter, Contractor shall  
477 provide a written notification to the City authorizing that the Facility has and will continue to have  
478 the capability to Process and recover the Compostable Plastics throughout the Term of the  
479 Agreement; and the Contractor shall not revoke this authorization at any time during the Term of  
480 the Agreement. If the Contractor does not submit such notification, or if at any time during the  
481 Term of the Agreement the Approved Organic Materials Processing Facility can no longer accept  
482 and/or Process Compostable Plastics, the City may assess Liquidated Damages or deem such  
483 failure an event of default of the Contractor under Article 11. Contractor shall notify the City  
484 within seven (7) days of the Facility's inability to accept the Compostable Plastics. The notification  
485 shall, at a minimum, include: the date and a description of the reasons that the Facility is not able  
486 to Process and recover the Compostable Plastics; the period of time the Facility will not Process  
487 and recover these materials; and, the Contractor's proposed plan to find an alternative Facility or  
488 arrangement to Process the Compostable Plastics, subject to City approval. City may prohibit or  
489 restrict the use of Compostable Plastics, with a six (6) month notice to Contractor, and this shall  
490 not constitute a City-directed change in scope or Change in Law under this Agreement.

## 491 **4.2 Solid Waste**

492 Contractor shall offer and provide Solid Waste Collection services as described in Exhibit B.

493 Contractor acknowledges that City is committed to Diverting materials from Disposal through the  
494 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City  
495 may implement new programs other than Discarded Materials Collection programs. Examples of new  
496 programs City may implement include Reuse programs, drop-off programs, Community Composting, and  
497 other Diversion programs, with or without the involvement of the Contractor, that may impact the  
498 overall quantity or composition of Solid Waste to be Collected by Contractor. Contractor shall not be  
499 entitled to any compensation or other relief resulting from a decline in Solid Waste volumes or Tonnage  
500 or from a change in the composition of Solid Waste.

501 Contractor shall Transport all Solid Waste Collected in the City to the Designated Disposal Facility.  
502 Contractor shall pay all costs associated with Transportation and Disposal of Solid Waste including  
503 payment of any gate fees charged at the Designated Disposal Facility. Contractor shall observe and  
504 comply with all regulations and posted rules in effect at the Designated Disposal Facility and cooperate  
505 with and take direction from the operator thereof with respect to delivery of Solid Waste.

## 506 **4.3 Bulky Items and Reusable Materials**

507 Contractor shall offer Bulky Item and Reusable Materials Collection services as described in Exhibit B.  
508 On-call Bulky Item and Reusable Materials Collection services shall be offered to Customers within a  
509 reasonable time but not longer than seven (7) days of Contractor's receipt of such a Customer request  
510 for service, pursuant to Exhibit B. Contractor shall make reasonable efforts to schedule on-call Bulky  
511 Item and Reusable Materials Collections on a day that is convenient to the Customer. Contractor shall

512 Transport all Bulky Items or Reusable Materials Collected under this Agreement to the Approved  
513 Reusable Materials Processing Facility. Contractor shall pay all costs associated with Transporting and  
514 Processing Bulky Items and Reusable Materials. Contractor shall observe and comply with all regulations  
515 in effect at the Approved Reusable Materials Processing Facility and cooperate with and take direction  
516 from the operator thereof with respect to delivery of Bulky Items and/or Reusable Materials.

#### 517 **4.4 City Sponsored Events**

518 Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste services to City  
519 sponsored events, at no cost to the event or City. Special event services include all of the following  
520 unless specifically waived in writing by City Manager.

521 A. **Event Collection Stations.** Contractor shall provide and set-up event Collection stations for  
522 Collection of Recyclable Materials, Organic Materials, and Solid Waste at City-sponsored events.  
523 Each event Collection station shall include a separate Cart for each of Recyclable Materials,  
524 Organic Materials, and Solid Waste, as appropriate. Contractor shall provide a sufficient number  
525 of event Collection stations of sufficient capacity to meet the needs of the event as determined by  
526 Contractor in cooperation with the City and/or the event organizer. Collection stations shall utilize  
527 the same Carts used to provide services to Residential Customers unless alternative Containers are  
528 approved by the City. Contractor shall provide liners/bags for the Carts at the Collection stations  
529 and shall line the Carts as a part of the station set up. Collection stations shall include adequate  
530 signs and labeling.

531 B. **Roll-Off Boxes.** Upon request, Contractor shall provide Containers for the aggregation of material  
532 removed from event Collection stations during the course of the event. Contractor shall provide  
533 Containers in sufficient number of appropriate type(s) for the needs of the event as determined by  
534 Contractor in cooperation with the City and/or the event organizer. Contractor shall service  
535 Containers, as agreed-upon with the City and/or the event organizer, and deliver Collected  
536 materials to the appropriate Approved Facility for Processing and/or Disposal.

537 C. **Public Education Booth.** Upon request of either the City Manager or the event organizer,  
538 Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about  
539 the services and programs provided by Contractor under this Agreement and the benefits of  
540 source reduction, reuse, Recycling, and Composting.

541 D. **Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a  
542 report to the City Manager and event organizer. The report should include, at a minimum: the  
543 number of event Collection stations deployed at the event, the Tonnage of each material type  
544 (i.e., Recyclable Materials, Organic Materials, and Solid Waste) Collected, and a description of the  
545 public education provided at the event.

546 Contractor may, at its sole discretion and expense, coordinate with local youth, community, or  
547 charitable organizations to provide some or all of the required services. Regardless of Contractor's use  
548 of such an organization, Contractor shall be responsible for ensuring that service is provided to the  
549 Customer in a professional and timely manner.

550 For special events that are not identified in Exhibit B4 or otherwise hosted or sponsored by the City,  
551 Contractor shall provide the above-described special event services at the request of the event organizer

552 and may negotiate the charges for such services with the event organizer based on the specific needs of  
553 the event, or provide the services at their sole expense, at no cost to the City or ratepayers.

#### 554 **4.5 Public Education and Outreach**

555 The public education and outreach activities included in the scope of services provided by Contractor  
556 under this Agreement are described in Exhibit C.

557 A. **Program Objectives.** The City's public education and outreach strategy shall focus on improving  
558 Generator understanding of the benefits of, and opportunities for, source reduction, reuse, and  
559 landfill Disposal reduction and supporting compliance with Applicable Laws and regulations  
560 including, but not limited to, AB 939, AB 341, AB 1826, and SB 1383. Examples of goals of the City-  
561 provided public education and outreach program include, but are not limited to: (i) informing  
562 Generators about the services that are provided under this Agreement with specific focus on  
563 describing the methods and benefits of source reduction, reuse, Recycling, and Composting;  
564 (ii) instructing Generators on the proper method for placing materials in Containers for Collection  
565 and setting Containers out for Collection, with specific focus on minimizing contamination of  
566 Recyclable Materials and Organic Materials; (iii) clearly defining Excluded Waste and educating  
567 Generators about the hazards of such materials and their opportunities for proper handling;  
568 (iv) discouraging Generators from buying products if the product and its packaging are not readily  
569 reusable, Recyclable, or Compostable; (v) informing Generators subject to Food Recovery  
570 requirements under SB 1383 of their obligation to recover Edible Food and actions they can take  
571 to prevent the creation of Food Waste; (vi) encouraging the use of Compost and recovered  
572 Organic Waste products; and, (vii) encouraging Generators to purchase products/packaging made  
573 with Recycled content materials. The cumulative intended effect of these efforts is to reduce  
574 generation of Solid Waste and, ultimately, Disposal of Solid Waste by each Generator in the City,  
575 and Contractor agrees to support and not undermine or interfere with such efforts.

576 B. **Contractor Public Education Requirements.** Contractor agrees to print, produce, and distribute  
577 education materials and conduct outreach detailed in Exhibit C at no additional cost to ratepayers  
578 or City.

579 Contractor shall obtain approval from the City Manager on all Contractor-provided advertising,  
580 promotional, or service-related materials used within the City before publication, distribution,  
581 and/or release. The City Manager, in their sole discretion, shall have the right to deny the use of  
582 any materials or content or may request that Contractor include City identification and contact  
583 information on materials and Contractor's approval of such requests shall not be unreasonably  
584 withheld.

585 C. **Non-English Language Requirements.** The Contractor shall make all public education and  
586 outreach materials required by this Section 4.5 available in English, Spanish, Korean, and  
587 Vietnamese.

588 Upon City's request, Contractor shall provide materials in additional languages beyond those  
589 specified in this Section 4.5 in response to: shifting demographics within the City; updates to State  
590 requirements or Applicable Law; or, any other reason deemed appropriate by the City

**591 4.6 Billing**

592 Except as otherwise set forth in this Section 4.6, Contractor shall, at its own expense, be solely  
593 responsible for the billing to and collection from every Customer for all of its Collection services and  
594 shall provide itemized bills to each Customer distinctly showing charges for all classifications of services,  
595 including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a  
596 Franchise Fee to City as consideration for this Agreement. Accordingly, Contractor's bills shall not  
597 include separate itemization of a "Franchise Fee" or other similar designation. Billings shall be made  
598 monthly for Commercial Customers and may occur bi-monthly or quarterly for Residential Customers.  
599 Customers may be billed in advance of, or subsequent to, services being provided at the option of  
600 Contractor. Customers ordering service after the first of the month or canceling service prior to the end  
601 of the month shall be charged on a prorated per-pickup basis.

602 Upon request by Contractor, the City Manager in the exercise of his/her reasonable discretion, may  
603 modify, on an interim basis, the procedures set forth in this Section 4.6 regarding Contractor's  
604 obligations for billing and collection for Collection services in order to assist Contractor in efficiently  
605 accomplishing such billing and collection activities. Such modification may include, but is not limited to,  
606 authorization for the collection of Customer bills for the ID-1 area on the tax rolls for a specified period  
607 of time, instead of through direct Customer billing and collection by Contractor. No authorization for  
608 modification of the procedures shall be valid unless issued in writing by the City Manager and only to  
609 the extent authorized by law. Such authorization shall automatically expire at the end of the time period  
610 specified in writing by the City Manager unless renewed in writing by the City Manager. Contractor shall  
611 develop, maintain, and regularly update a Customer Account Information Database, which shall include  
612 but is not limited to:

- 613 • Customer name;
- 614 • Phone number;
- 615 • Service address;
- 616 • Email address; and,
- 617 • Customer Service Levels, including:
  - 618 ○ Customer Service Levels exceptions, and,
  - 619 ○ Customer service waivers.

620 Contractor shall make access to such database available, upon no more than five (5) Working Days'  
621 request from the City Manager, in accordance with this Section 4.6 and Section 6.1. Contractor shall  
622 additionally, on an annual basis, reconcile all Customer accounts with City's GIS information. Failure to  
623 maintain database in accordance with this Section 4.6 shall result in Liquidated Damages as identified in  
624 Section 11.6.

625 Contractor shall provide Customers the option to receive invoices electronically using paperless invoices,  
626 or by standard mail using standard (paper) invoices. Contractor shall permit Customers the ability to pay  
627 their bills through an electronic check or credit card and include the ability for Customer billings to be  
628 automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills from  
629 Customers who decline to use such internet-based billing system. Contractor shall make arrangements  
630 to allow such Customers to pay bills by check, electronic check, money order, and credit card.

631 Up to once per quarter, City may direct Contractor to attach inserts to Customer invoices. Contractor  
632 shall provide electronic bill inserts to Customers who are billed electronically, and paper bill inserts to  
633 Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the  
634 Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City  
635 request for such attachments, Contractor shall comply with such request during its next billing cycle for  
636 the targeted Customer group. Contractor shall perform this service with no additional requirement for  
637 compensation.

638 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of  
639 this Agreement, for inspection and verification by the City Manager at any reasonable time but in no  
640 case more than thirty (30) calendar days after receiving a request.

641 If Contractor fails to invoice a Customer, or otherwise undercharges a Customer for services provided  
642 for more than six (6) months, Contractor may not subsequently attempt to collect the undercharged  
643 amount for more than six months of service. If Contractor overcharges a Customer for a period of more  
644 than six (6) months, Contractor shall reimburse or credit the Customer for at least six months of the  
645 overcharged service but is not required by this Agreement to reimburse or credit the Customer for more  
646 than six (6) months of overcharges. This Agreement also does not prohibit Contractor from reimbursing  
647 or crediting a Customer for more than six (6) months of overcharges.

648 If a Customer reduces or cancels service during a billing cycle, the Customer shall be entitled to a  
649 proration of the billing from the date that the service change was requested, in the case of cancellations  
650 or reductions in the Customer's bill, or the date the service change was fulfilled, in the case of increases  
651 in the Customer's bill.

652 A. **Vacant Premises.** During any time when a Premises is vacant and following receipt of written  
653 notice by Contractor from Customer that the Premises has been vacated, Collection services shall  
654 not be provided by Contractor, and Contractor shall not bill such Premises for Collection Service.  
655 The Customer at any such Premises shall be responsible to provide reasonable evidence to  
656 Contractor, pursuant to such guidelines as Contractor shall develop and City Manager shall  
657 approve, demonstrating the Premises is vacant. Any Customer grievance regarding a claim that a  
658 Premises was vacant and received no service, and hence should not be billed for a given period  
659 pursuant to this Section 4.6.A, may be appealed by the Customer to the City Manager subject to  
660 substantial evidence. City Manager's decision shall be final. It is the intent of the Parties that  
661 Contractor shall not be entitled to charge for services that are not needed or used.  
662 Notwithstanding the foregoing, it is the intent of the Parties that Premises shall not be deemed  
663 vacant for purposes of this Section 4.6.A during such period of time that such Premises are vacant  
664 due only to a temporary absence of the Owner(s) or Occupant(s), such as a period during which  
665 the Owner(s) or Occupant(s) are merely on vacation.

666 B. **Delinquent Accounts.**

667 1. Any service account unpaid by the due date listed on the billing statement shall be  
668 deemed delinquent. Except to the extent otherwise provided herein, it shall be the sole  
669 responsibility of Contractor to take any authorized measures to collect any delinquent  
670 sums owed.

671 2. Any delinquent fees or service charges to be imposed in connection with delinquent  
672 accounts shall be set by Contractor and be subject to City Manager review.



- 673 3. Contractor may discontinue service to any Customer whose account is delinquent in the  
674 manner as set forth in this Section 4.6.B. Customers who have not remitted required  
675 payments within thirty (30) days after the date of billing shall be notified on forms  
676 approved by the City Manager. Said forms shall contain a statement that services may be  
677 discontinued fifteen (15) days from the date of notice if payment is not made before that  
678 time. If payment is not made by the expiration of said fifteen (15) day period, Contractor  
679 may discontinue service forty-eight (48) hours thereafter.
- 680 4. Contractor shall resume Collection services on the next regularly scheduled Collection day  
681 for any Customer whose service is discontinued upon receipt of payment of delinquent  
682 fees and any related service restart charges, or at such sooner time as directed to do so by  
683 City.
- 684 5. A deposit equal to the maximum Rate for one (1) month's service as set forth on in the  
685 approved Rate schedule, as such Rates may be amended from time to time, may be  
686 required of accounts which have been discontinued for non-payment prior to re-  
687 instituting service at such accounts.
- 688 6. Contractor shall make all reasonable efforts to diligently pursue and collect all delinquent  
689 sums owed by Customers to Contractor for Collection Service provided by Contractor.  
690 Following exhaustion all such reasonable efforts by Contractor, Contractor may request  
691 City's assistance in collecting any remaining delinquent sums owed, and City shall  
692 endeavor, in good faith, to assist Contractor with its collection efforts. City's obligation to  
693 assist Contractor hereunder shall include, to the extent authorized by law, the imposition  
694 of a lien on the property receiving Collection Service and collection of such delinquent  
695 amounts on the tax rolls in accordance with Applicable Law. Notwithstanding the  
696 foregoing, City shall have no liability to Contractor for failure to collect any such  
697 delinquent sums from Customers on behalf of Contractor. Contractor shall reimburse City  
698 for any and all costs incurred by City in assisting Contractor in the collection of delinquent  
699 sums owed.

700 C. **Collection and Processing of Payments.**

- 701 1. **Accounting and Deposit of Funds.** All payments received by Contractor shall be  
702 appropriately credited to Customer accounts, deposited in a bank account, and accounted  
703 for in a businesslike manner utilizing generally accepted accounting principles. To facilitate  
704 audits and record keeping, Contractor shall make all withdrawals from its bank accounts  
705 by check, ACH debit/credit, or wire, regardless of whether the withdrawal is to provide  
706 funds to City, Contractor, or any permissible Subcontractor, vendor, or supplier of  
707 Contractor.
- 708 2. **Allocation of Funds.** With respect to payments received from each Customer, unless a  
709 Customer specifically directs a different allocation, funds shall be allocated first to  
710 outstanding charges for Collection services, then to any related delinquency fees or other  
711 administrative charges, up to the amount of any outstanding balance. Any overpayment  
712 shall be credited to future bills in the same sequence or returned to Customers, as  
713 appropriate.

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## 714 4.7 Customer Service Program

### 715 A. Program Requirements.

716 1. **Customer Service Office.** Contractor maintains an office located at 1131 North Blue Gum  
717 Street, Anaheim. No change in this location shall occur without City's approval if such  
718 change would result in Contractor not having an office within 25 miles of City's City Hall.  
719 Said office shall be open, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through  
720 Friday, and 8:00 a.m. to 12:00 p.m. Saturday, Holidays excepted. At least one (1)  
721 responsible and qualified representative of Contractor, capable of communicating in  
722 English, Spanish, Korean, and Vietnamese, shall be present and available during all times  
723 that an office is required to be open as noted above ("Office Hours"), for personal  
724 communication with the public, and a similarly qualified Person shall be available for  
725 communication with the public by phone during any times other than Office Hours when  
726 Collection is occurring.

### 727 2. Telephone Customer Service Requirements.

728 a. Contractor shall maintain a toll-free telephone number that rings at an office within  
729 North Orange County at all times during Office Hours. English and Spanish speaking  
730 personnel will be available during Office Hours to assist Customers with telephonic  
731 inquiries. Contractor shall also have the ability (through the use of outside resources  
732 or otherwise, including having access to translation services for telephone inquiries  
733 made during Office Hours) to communicate with Customers who speak Spanish,  
734 Korean, Vietnamese, or another foreign language to ensure their inquiries, questions,  
735 Complaints, and other matters are dealt with in a reasonably timely fashion. All such  
736 personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and  
737 have the authority to respond and/or advise Customers seeking assistance.  
738 Contractor's telephone system shall be adequate to handle the volume of calls  
739 typically experienced on the busiest days. Contractor shall provide City with a 24-  
740 hour emergency number to a live Person, not voicemail.

741 b. Contractor shall make reasonable attempts to answer all phone calls within five (5)  
742 rings. If a call has been placed on hold for three (3) minutes, the caller will either be  
743 switched to a message center that shall be responsible to obtain the caller's address  
744 and phone number, or a Customer service representative will obtain the Customer's  
745 address and a number at which the call can be returned. Contractor shall make at  
746 least three (3) attempts within the next twenty-four (24) hour period to return the  
747 call, with the first such attempt not more than one (1) hour after the caller leaves the  
748 message. If Contractor is unsuccessful in contacting the Customer after following this  
749 procedure, it shall send a letter to the caller indicating its efforts.

750 c. Contractor shall record Customer Complaints regarding Customer service personnel  
751 in accordance with Section 4.7.A.3. Customer service representatives receiving  
752 multiple Complaints are to be transferred from Customer service duties relating to  
753 services performed under this Agreement.

754 d. Contractor will maintain an emergency telephone number for use outside normal  
755 office hours. Contractor shall have a representative, or an answering service to  
756 contact such representative, available at said emergency telephone number during  
757 all hours other than normal office hours. Contractor shall be able to respond to

758 inquiries in English, Spanish, Vietnamese, and other languages as directed by the City.  
759 Contractor must also provide a Telecommunications Device for the Deaf (TDD)  
760 service for use by Persons with hearing or speech difficulties.

761 3. **Complaint Documentation.** Daily logs of Complaints shall be retained for a minimum of  
762 twenty-four (24) months and shall be available to City at all times upon request.

763 Contractor shall log all Complaints received by telephone, and or email, and said log shall  
764 include the date and time the Complaint was received, name, address and telephone  
765 number of callers, description of Complaint, employee recording Complaint and the action  
766 taken by Contractor to respond to and remedy Complaint. Missed pickups shall be  
767 included in this log.

768 All Customer Complaints and inquiries shall be date-stamped when received and shall be  
769 initially responded to within one (1) Business Day (excluding Saturday, Sunday and  
770 Holidays as defined in Exhibit A) of receipt. Contractor shall log action taken by Contractor  
771 to respond to and remedy the Complaint.

772 All Customer service records and logs kept by Contractor shall be available to City upon  
773 request and at no cost to City. City shall, at any time during regular Contractor business  
774 hours, have access to Contractor's City Liaison for purposes that may include monitoring  
775 the quality of Customer service or researching Customer Complaints.

776 4. **Resolution of Customer Complaints.** Disputes between Contractor and its Customers  
777 regarding the services provided in accordance with this Agreement may be resolved by  
778 the City, except for Customers claims for personal injury or damages to property. The  
779 City's decision shall be final and binding. Contractor shall reimburse the City's legal and  
780 consultant costs for each City intervention in a dispute between Contractor and a  
781 Customer if the City reasonably deems intervention is required and the Customer's  
782 dispute is valid.

783 Should Contractor and Customers not be able to establish a mutually acceptable fee to be  
784 charged for special hauling services, the matter shall also be determined by the City, and  
785 the City's decision shall be final.

786 Intervention by the City is not a condition precedent to any rights or remedies Customers  
787 or third parties might otherwise have in any dispute with Contractor. Nothing in this  
788 Section 4.7.A is intended to affect the remedies of third parties against Contractor or to  
789 Customer claims for personal injury or property damage. To the extent that remedies are  
790 warranted through this Agreement, this Section shall apply.

791 5. **Website and Email Access.** Contractor shall develop and maintain a website that is  
792 accessible by the public and solely dedicated to the operations under this Agreement in  
793 the City. Contractor's website shall include all Rates allowed to be charged under the  
794 Agreement, all public education and outreach materials produced and distributed under  
795 this Agreement and provide the public the ability to e-mail Contractor questions, service  
796 requests, or Complaints. Contractor shall respond the same day to all Customers who  
797 leave e-mail messages by 5:00 p.m. on a Working Day and shall respond by noon of the  
798 following Working Day for any e-mail messages left after 5:00 p.m. Contractor may  
799 respond to Customer e-mails via e-mail or phone.

800 B. **Missed Collections.**

801 1. **Missed Collection Complaints.** When handling Customer Complaints related to missed or  
 802 incomplete Collections, Contractor shall not question or contest the Customer's claim that  
 803 the Collection was missed or incomplete, even in cases where the route driver recorded  
 804 the Container(s) in question as already "Collected" or "not out."

805 2. **Schedule for Resolution.** Contractor shall resolve every Customer Complaint of a missed  
 806 or incomplete Collection by returning to the Customer address and completing the  
 807 Collection. For all Complaints related to missed Collections that are received by 12:00 p.m.  
 808 on a Working Day, the Contractor shall return to the Customer address and Collect the  
 809 missed materials on the same Working Day on which the missed Collection was reported.  
 810 For those Complaints related to missed Collections that are received after 12:00 p.m. on a  
 811 Working Day, the Contractor shall have until the end of the following Working Day to  
 812 resolve the Complaint. Contractor's failure to comply with this Section 4.7.B may result in  
 813 Liquidated Damages, in accordance with Section 11.6.

814 Contractor shall not be required to return and complete a Collection in response to a  
 815 Complaint if the Contractor's driver has left a Non-Collection Notice in accordance with  
 816 Section 4.10.A.4.

817 3. **Courtesy Collections for Admitted Late Set-Outs.** In the event that a Customer: (i) reports  
 818 that their Container(s) were placed for Collection after Contractor's Collection vehicle had  
 819 already passed the Premises for regularly scheduled Collection; (ii) does not claim that  
 820 Contractor missed the Collection; and, (iii) requests that the Contractor return and Collect  
 821 their Containers, Contractor shall return to the Customer Premises and provide a courtesy  
 822 Collection at no charge to the Customer. Contractor is not required to provide more than  
 823 three (3) courtesy Collections for admitted late set-outs per Customer per calendar year.  
 824 For Residential Customers, one (1) courtesy Collection represents Collection of up to three  
 825 (3) Carts (Recyclable Materials, Organic Materials, Solid Waste) per incident. Contractor  
 826 shall complete the courtesy Collection by the end of the following Working Day. The  
 827 provisions of this Section 4.7.B shall only apply if the Customer acknowledges, and  
 828 Contractor documents in writing, that the event did not constitute a missed or incomplete  
 829 Collection event by the Contractor.

830 C. **SB 1383 Non-Compliance Complaints.** For Complaints received in which the Person alleges that an  
 831 entity is in violation of SB 1383 requirements, Contractor shall document the information listed in  
 832 Exhibit F. Contractor shall provide this information in a brief Complaint report to the City for each  
 833 SB 1383-noncompliance Complaint within seven (7) days of receipt of such Complaint, and a  
 834 monthly summary report of SB 1383-non-compliance Complaints in accordance with Exhibit F.

835 Upon City request, Contractor shall conduct follow-up inspections and/or outreach to the violating  
 836 entity, and shall document the information in the reports provided pursuant to Exhibit F.

837 **4.8 Access to Customer Service and Billing Systems**

838 Upon request of City, Contractor shall provide access and any necessary training to one (1) or more City  
 839 employee(s) (as designated by the City) regarding the use of Contractor information systems as  
 840 described in this Section 4.8. Contractor shall designate one (1) member of Contractor staff to work  
 841 directly with such City employee. Contractor shall provide such City employee with access to Customer

842 service, call center, and operations information systems in order to validate Contractor performance  
843 standards and recommend changes to Customer Service Levels to resolve service issues or otherwise  
844 address Customer needs. If recommended Service Level changes are made, the designated City staff will  
845 work with Contractor's route manager to make such changes, which shall not be denied by Contractor  
846 except for reasons related to Customer, route driver, and/or equipment safety. Contractor shall also  
847 provide access to Customer contact information (including email addresses) for purposes of City-  
848 provided public education and outreach activities. In addition, Contractor shall ensure that the City  
849 Manager and any other City staff, as requested by the City, have read-only access to all service order,  
850 billing, and Customer service records in Contractor's internal information systems. Such read-only access  
851 is intended to provide the City the ability to review notes related to Customer service and/or billing  
852 issues.

#### 853 **4.9 Service Exemptions**

854 A. **General Exemptions.** Upon Customer request, and with written approval from the City Manager,  
855 Contractor shall cease providing, and collecting payment for, Collection services to a Premises  
856 which is anticipated to be vacant for no less than thirty (30) days based on verified information  
857 from Customer. In addition, upon written direction from the City Manager, Contractor shall  
858 modify or otherwise cease providing Collection services to Customers requesting other service  
859 exemptions, provided that such Customers consistently demonstrate the ability to responsibly  
860 manage Discarded Materials generated at the Premises in question, in a manner consistent with  
861 Applicable Law.

#### 862 B. **Commercial and Multi-Family Customer Waivers.**

863 1. **General.** The City may grant waivers described in this Section 4.9.B to Commercial or  
864 Multi-Family Generators that impact the scope of Contractor's provision of service for  
865 those Customers; provided, the Generator shall continue to subscribe with Contractor for  
866 franchised Collection services to the extent such services are not waived by the City.  
867 Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14  
868 CCR Section 18984.11, or other requirements specified by the City.

#### 869 2. **Types of Generator Waivers**

870 a. **De Minimis Waivers.** The City may waive a Commercial Business' or Multi-Family  
871 property's obligation to comply with some or all of the Recyclable Materials and  
872 Organic Materials requirements set forth in this Agreement, SB 1383, and of the  
873 Municipal Code and District's Code of Regulations if the Generator provides  
874 documentation or the City has evidence demonstrating one (1) of the following de  
875 minimis conditions:

876 i. The Commercial or Multi-Family Generator's total Discarded Materials  
877 Collection service is two (2) cubic yards or more per week, and Organic Waste  
878 subject to Collection in a Recyclable Materials Container or Organic Materials  
879 Container comprises less than twenty (20) gallons per week, per applicable  
880 Container, of the Commercial Business' total waste; or,

881 ii. The Commercial or Multi-Family Generator's total Discarded Materials  
882 Collection service is less than two (2) cubic yards per week, and Organic Waste  
883 subject to Collection in a Recyclable Materials Container or Organic Materials

884 Container comprises less than ten (10) gallons per week, per applicable  
885 Container, of the Commercial Business' total waste.

886 b. Physical Space Waivers. The City may waive a Commercial or Multi-Family  
887 Generator's obligation to comply with some or all of the Recyclable Materials and  
888 Organic Materials requirements set forth in this Agreement, SB 1383, and the  
889 Municipal Code and District's Code of Regulations if the Commercial or Multi-Family  
890 Generator provides documentation, or the City has evidence from its staff, the  
891 Contractor, licensed architect, engineer, or similarly qualified source demonstrating  
892 that the Premises lacks adequate space for Recyclable Materials Containers and/or  
893 Organic Materials Containers.

894 3. **Contractor Review of Waiver Requests.** Generators may submit requests for de minimis  
895 waivers and physical space waivers to the City or Contractor. The City shall notify  
896 Contractor of the request, and Contractor shall within seven (7) days of receipt of the  
897 City's request, inspect the Generator's Premises to verify the accuracy of the application.  
898 Contractor shall provide documentation of the inspection, including the date of the  
899 inspection, Customer name and address, a description of the Premises, evaluation of each  
900 criterion of the relevant waiver type, and photographic evidence. The Contractor shall  
901 send this information and documentation to the City in a timely manner, not to exceed  
902 three (3) days after the date of inspection. The City ultimately retains the right to approve  
903 or deny any application, regardless of the information provided by the Contractor.  
904 Contractor shall report information regarding waivers reviewed within the month, if any,  
905 in accordance with this Section and Section 11.6.

906 4. **Service Level Updates.** When the City grants a waiver to a Customer, or the Customer's  
907 waiver status changes after a re-verification determination, the City shall notify the  
908 Contractor within seven (7) days of the waiver approval or status change with information  
909 on the Customer and any changes to Service Level or Collection service requirements for  
910 the Customer. Contractor shall have seven (7) days to modify the Customer's Service  
911 Level, Customer account data, and billing statement, as needed.

912 5. **Waiver Re-verification.** The City shall be responsible for re-verification of waivers. Upon  
913 request of the City, the Contractor shall support the City in this re-verification process by  
914 providing requested Customer information as per Customer database requirements in  
915 Section 4.6. In the event that a waiver status changes, Contractor shall update the  
916 Customer's information and Service Level in accordance with Subsection 4.9.B.4 above.

917 C. **Contractor Service Exemptions.**

918 1. **Disaster Waivers.** In the event of a disaster, the City may grant Contractor a waiver of  
919 some or all Discarded Materials Collection requirements under this Agreement and 14  
920 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the  
921 waiver, provided that such waiver has been approved by CalRecycle. Any resulting  
922 changes in Collection requirements shall be addressed as a change in scope in accordance  
923 with Section 3.6.

924 2. **Quarantined Waste.** If approved by the City, the Contractor may Dispose of, rather than  
925 Process, specific types of Organic Materials and/or Recyclable Materials that are subject  
926 to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a  
927 period of time specified by the City or until the City provides notice that the quarantine

928 has been removed and directs Contractor to Transport the materials to the Approved  
929 Facilities for such material.

930 In accordance with Exhibit F, the Contractor shall maintain records and submit reports  
931 regarding compliance agreements for quarantined Organic Materials and Recyclable  
932 Materials that are Disposed of pursuant to this Subsection 4.9.C.

#### 933 **4.10 Contamination Monitoring**

##### 934 A. **Annual Route Reviews.**

935 1. **Methodology.** The Contractor shall, at its sole expense, conduct route reviews of  
936 Containers for Prohibited Container Contaminants in a manner that meets the  
937 requirements of this Section 4.10; is approved by the City; and results in all routes being  
938 reviewed at least annually.

939 The Contractor's route review shall include all Container types in service (Recyclable  
940 Materials, Organic Materials, and Solid Waste Containers) for all Customer Types. The  
941 Containers shall be selected prior to beginning the route review.

942 Contractor shall ensure that a minimum of one percent (1%) of accounts or twenty-five  
943 (25) accounts, whichever is larger, on each and every hauler route are inspected annually.

944 Contractor shall develop a specific route review methodology to accomplish the above  
945 Container inspection requirements and such methodology shall comply with the  
946 requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed route  
947 review methodology for the coming year to the City no later than January 15 of each year  
948 describing its proposed methodology for the calendar year and schedule for performance  
949 of each route's annual review. Contractor's proposed route review methodology shall  
950 include not only its plan for Container inspections but shall also include its plan for  
951 prioritizing the inspection of Customers that are more likely to be out of compliance. The  
952 City and/or CalRecycle will review and approve the proposed methodology. Contractor  
953 may commence with the proposed methodology upon approval.

954 If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate  
955 to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole  
956 expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct  
957 additional route reviews, increased Container inspections, or implement other changes  
958 using the revised procedure. If the Contractor's proposed methodology meets the  
959 requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City,  
960 the Contractor shall, at the expense of the City, revise the methodology and implement  
961 the necessary changes using the revised procedure.

962 The City Manager may request, and Contractor shall accept, modifications to the schedule  
963 to permit observation of the route reviews by the City. In addition, Contractor shall  
964 provide an email notice to the City Manager no less than ten (10) Working Days prior to  
965 each scheduled Route review that includes the specific time(s), which shall be within the  
966 City's normal business hours, and location(s).

967 2. **Contamination Notification.** Upon identification of Prohibited Container Contaminants in  
968 a Customer's Container, Contractor shall provide the Customer with a notice of

969 contamination in the form of either a Courtesy Pick-Up Notice or a Non-Collection Notice  
970 as determined by the route auditor.

971 3. **Courtesy Pick-Up Notice.** Upon identification of Prohibited Container Contaminants in a  
972 Customer's Container, Contractor shall provide the Customer a Courtesy Pick-Up Notice at  
973 the Customer's door or gate; or, subject to City's approval, may deliver the notice by mail,  
974 e-mail, or phone. Contractor shall also attach or adhere Courtesy Pick-Up Notice to  
975 Generators contaminated Containers.

976 The Courtesy Pick-Up Notice shall, at a minimum:

- 977 a. Inform the Customer of the observed presence of Prohibited Container  
978 Contaminants;
- 979 b. Include the date and time the Prohibited Container Contaminants were observed;
- 980 c. Include information on the Customer's requirement to properly separate materials  
981 into the appropriate Containers, and the accepted and prohibited materials for  
982 Collection in each Container;
- 983 d. Inform the Customer of the courtesy pick-up of the contaminated materials on this  
984 occasion with information that following three (3) instances for Residential and one  
985 (1) instance for Commercial of contaminated materials; Contractor may assess  
986 contamination fees; and,
- 987 e. Include photographic evidence.

988 The format of the Courtesy Pick-Up Notice shall be approved by the City Manager and  
989 must be a distinct color from the Non-Collection Notices.

990 Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials  
991 Containers and either Transport the material to the appropriate Approved Facility for  
992 Processing or Contractor may Collect the contaminated materials with Solid Waste and  
993 Transport the contaminated materials to the Designated Disposal Facility. A courtesy  
994 Collection of contaminated Recyclable Materials or Organic Materials where the materials  
995 are sent to the Designated Disposal Facility may be made with a Solid Waste Collection  
996 vehicle, provided that the contaminants may safely and lawfully be Collected as Solid  
997 Waste.

998 4. **Non-Collection Notices.**

999 a. Non-Collection Notice. Upon identification of Prohibited Container Contaminants in a  
1000 Container in excess of standards agreed upon by the Parties or that contain Excluded  
1001 Waste, Contractor shall provide a Non-Collection Notice to the Generator.

1002 The Non-Collection Notice shall, at a minimum:

- 1003 i. Inform the Customer of the reason(s) for non-Collection;
- 1004 ii. Include the date and time the notice was left or issued;
- 1005 iii. Describe the premium charge to Customer for Contractor to return and Collect  
1006 the Container after Customer removes the Prohibited Container Contaminants;
- 1007 iv. Provide a warning statement that a contamination Processing fee may be  
1008 assessed; and,



- 1009 v. Include photographic evidence of the violation(s).
- 1010 b. Communications with Customer. Whenever a Container at the Premises of a
- 1011 Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the
- 1012 Customer on the scheduled Collection day or within two (2) hours of the scheduled
- 1013 Collection day by telephone, email, text message, or other verbal or electronic
- 1014 message to explain why the Container was not Collected. Whenever a Container is
- 1015 not Collected because of Prohibited Container Contaminants, a Customer service
- 1016 representative shall contact the Customer to discuss and encourage the Customer to
- 1017 adopt proper Discarded Materials preparation and separation procedures.
- 1018 c. Contractor Return for Collection. Upon request from Customer, Contractor shall
- 1019 Collect Containers that received Non-Collection Notices within one (1) Working Day
- 1020 of Customer's request if the request is made at least two (2) Working Days prior to
- 1021 the regularly scheduled Collection Day. Contractor shall bill Customer for the extra
- 1022 Collection service event ("extra pick-up") at the applicable Rates only if Contractor
- 1023 notifies Customer of the premium Rate for this service at the time the request is
- 1024 made by Customer.
- 1025 5. **Assessment of Contamination Processing Fees.** If the Contractor observes ten percent
- 1026 (10%) or more Prohibited Container Contaminants on more than three (3) occasions for
- 1027 Residential and one (1) occasion for Commercial and issued Courtesy Pick-Up Notices on
- 1028 each of those occasions, the Contractor may impose a contamination fee for that
- 1029 Customer's Service Level. The intent of contamination fees is to provide a behavioral tool
- 1030 to educate and prevent Customers from placing Source Separated Discarded Materials
- 1031 into the improper designated Container(s), as well as to cover the increased costs to
- 1032 Dispose of the contaminated loads. To ensure that the assessment of fees is to be used for
- 1033 the intended purposes and not as a form of revenue generation, Contractor agrees that
- 1034 contamination fees shall not exceed one percent (1%) of Contractor's Gross Receipts in
- 1035 any calendar quarter. In the event that contamination fees exceed one percent (1%) of
- 1036 Contractor's Gross Receipts in any calendar quarter, the assessment of contamination
- 1037 fees shall be suspended immediately and indefinitely pending a program assessment by
- 1038 the City and Contractor. Upon program suspension or at the request of the City at any
- 1039 time during the Term of the Agreement, City and Contractor shall meet and confer
- 1040 regarding the application and effectiveness of contamination fees in accomplishing the
- 1041 behavior change. If the program is suspended due to excessive revenue generation, the
- 1042 City may require Contractor to either: i) modify the program parameters; ii) modify the
- 1043 amount of the contamination fee; or, iii) return to the City any funds generated by the
- 1044 Contamination fee that exceed one percent (1%) of Contractor's Gross Receipts for a
- 1045 given period of time to be used for Recycling education and/or enforcement
- 1046 programming.
- 1047 Failure to comply with the requirements of this Section 4.10.A shall equate to Liquidated
- 1048 Damages in accordance with Section 11.6.
- 1049 Contractor shall leave a Contamination Processing Fee Notice attached to the Generators'
- 1050 contaminated Container(s). Contractor must also deliver notice by mail to the bill payer's
- 1051 address within twenty-four (24) hours of assessing the contamination fee.
- 1052 a. Contamination Processing Fee Notice. Contamination Processing Fee Notices shall be
- 1053 in a format approved by the City Manager. Contractor shall notify the City in its

1054 monthly report of Customers for which contamination Processing fees were assessed  
1055 per Section 4.10.A.6.

1056 Each Contamination Processing Fee Notice shall, at a minimum:

- 1057 i. Describe the specific material(s) of issue;
- 1058 ii. Explain how to correct future set outs; and,
- 1059 iii. Indicate that the Customer will be charged a contamination Processing fee on  
1060 their next bill.

1061 **6. Reporting Requirements.**

1062 a. Container Contaminant Log. The driver or other Contractor representative shall  
1063 record each event of identification of Prohibited Container Contaminants in a written  
1064 log or in the on-board computer system including, but not limited to: date, time,  
1065 Customer's address, type of Container, and photographic evidence. Photographic  
1066 evidence by the driver or other Contractor representative will be forwarded to City  
1067 staff at the time it is provided to a Customer via digital means.

1068 b. Contaminant Fees Assessment Report. Additionally, on no less than a weekly basis,  
1069 Contractor's Contract Administrator shall update the Customer's account records to  
1070 note the contaminant event(s) as identified by driver(s). Contractor shall maintain  
1071 records and report to the City monthly on contamination monitoring activities and  
1072 actions taken, consistent with the submittal timing and content requirements of  
1073 Exhibit F. Failure to meet the requirements of this Section 4.10.A.6.b, shall be subject  
1074 to Liquidated Damages as identified in Section 11.6.

1075 c. Monthly Report. The monthly report shall include, but is not limited to: list of  
1076 Customers that were assessed charges; photographic evidence of each  
1077 contamination event(s) where a fee(s) was assessed if requested by Customer or City  
1078 for identified occurrences; verification processes to assure accurate fee assessment;  
1079 date of notification, form(s) of notification given to Customer; list of efforts made in  
1080 educating the Customer that was assessed a fee; list of Customer Complaints in  
1081 response to fee assessment; Contractor's response and actions taken in response to  
1082 Customer Complaints; and, the dollar amount of contamination fees assessed during  
1083 the reporting period. Failure to meet the requirements of this Section 4.10.A.6.c,  
1084 shall be subject to Liquidated Damages as identified in Section 11.6.

1085 **4.11 Route Audit**

1086 Once during the first year and thereafter at City's request (but not more than once every four (4) years),  
1087 Contractor shall conduct an audit of its Collection routes in the City. City may use information from the  
1088 audit to develop a request for proposals for a new service provider. City may instruct Contractor when  
1089 to conduct the audit in order for the results to be available for use in preparation of a request for  
1090 proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that  
1091 would produce the most accurate Customer service information for a new service provider to use in  
1092 establishing service with Customers. In setting these audit dates, City will establish due dates for  
1093 Contractor providing routing and account information, and later, the report, to City.

1094 The route audit, at minimum, shall consist of an independent physical observation by Person(s) other  
1095 than the route driver of each Customer in City. This Person(s) is to be approved in advance by City. The

1096 route audit information shall include, as a minimum, the following information for each account:

1097 For Cart Customers:

- 1098 • Route Number
- 1099 • Truck Number
- 1100 • Number and size of Carts by waste stream (Refuse, Recyclable Materials, and Organic Waste)
- 1101 • Cart condition

1102 For Bin and Roll-Off Customers:

- 1103 • Route Number
- 1104 • Truck Number
- 1105 • Account Name
- 1106 • Account Number
- 1107 • Account Service Address
- 1108 • Account Type (Residential, Commercial, Roll-Off Box)
- 1109 • Service Level per Contractor Billing system (Quantity, Size, Frequency, Waste Stream)
- 1110 • Observed Containers (Quantity, Size, Frequency, Waste Stream)
- 1111 • Container condition
- 1112 • Proper signage
- 1113 • Graffiti

1114 Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report  
1115 summarizing the results of the audit. This summary shall include:

- 1116 • Identification of the routes
- 1117 • Route map
- 1118 • Truck numbers
- 1119 • Number of accounts, by route and in total (Residential, Commercial and Roll-Off Box)
- 1120 • Confirmation that all routes are dedicated exclusively to City Customers
- 1121 • Number and type of exceptions observed
- 1122 • Name and addresses of Customers that do not have Source Separated Recyclable Materials  
1123 Collection services and documentation of waivers if any for each account
- 1124 • Name and addresses of Customers that do not have Source Separated Organic Materials  
1125 Collection services and documentation of waivers if any for each account
- 1126 • Total monthly service charge (Residential, Commercial, and Roll-Off Box), pre-audit for each  
1127 Customer

- 1128 • Total monthly service charge (Residential, Commercial, and Roll-Off Box), post-audit  
1129 (subsequent to corrections of identified exceptions) for each Customer.

1130 The report shall include a description of the procedures followed to complete the route audit. This  
1131 description shall include the names and titles of those supervising the route audits and the name and  
1132 titles of those performing the observations.

1133 The report shall also include a description of the changes and Contractor's plans to resolve the  
1134 exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or  
1135 its representative.

#### 1136 **4.12 Preparation of CalRecycle Electronic Annual Report (EAR)**

1137 Contractor shall prepare, and submit to City for approval, the EAR by July 1 of each Rate Period.  
1138 Contractor shall revise EAR upon receipt of revisions made by City and/or their designee, and submit  
1139 EAR to CalRecycle on behalf of the City.

### 1140 **ARTICLE 5.** 1141 **STANDARD OF PERFORMANCE**

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#### 1142 **5.1 General**

1143 Contractor shall at all times comply with Applicable Law and provide services in a manner that is safe to  
1144 the public and the Contractor's employees. Except to the extent that a higher performance standard is  
1145 specified in this Agreement, Contractor shall perform services in accordance with Recyclable Materials,  
1146 Organic Materials, and Solid Waste management practices common to the Orange County area.

#### 1147 **5.2 Operating Hours and Schedules**

1148 A. **Hours of Collection.** Unless otherwise authorized by the City Manager, Contractor's days and  
1149 hours for Collection operations shall be as follows:

1150 1. **Residential Premises.** Collection from Residential Premises shall only occur between the  
1151 hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. Collection at Residential  
1152 Premises shall not occur on Saturdays; excepting Temporary Bin Services and Collection  
1153 occurring on Saturdays following such Holidays as may be approved by the City Manager.  
1154 No Collection services shall occur on Sundays at Residential Premises, except in  
1155 exceptional circumstances for which specific approval is given by the City Manager.

1156 2. **Commercial Premises.** Collection from Commercial Premises shall only occur between the  
1157 hours of 6:00 a.m. and 8:00 p.m., Monday through Saturday. Collection services may  
1158 occur at Commercial Premises on Sundays; provided, however, no such service shall occur  
1159 on Sundays in connection with any Premises at which the City Manager determines such  
1160 service would be contrary to the public interest. The City Manager may require Contractor  
1161 to comply with time frames applicable to Residential Premises in connection with  
1162 Collection services for Customers at Commercial Premises whose Premises are in close  
1163 proximity to Residential Premises.

1164 3. **City Facilities.** The Collection schedule for City facilities shall be the same as Commercial  
1165 Premises specified in Subsection 5.2.A.2 above.

1166 B. **Changes in Collection Routes.** Contractor shall establish Collection routes and a Collection  
 1167 schedule that shall be approved by the City Manager such that Customers at all Residential and  
 1168 Commercial Premises within the City will have not less than one (1) established Collection day  
 1169 each week. Contractor shall provide the City with route maps identifying at a minimum: the type  
 1170 of route (e.g., Single-Family, Multi-Family, Commercial) and the service day. Contractor may, at  
 1171 any time during the Term of this Agreement, propose changes or additional routes, subject to City  
 1172 approval, which shall not be unreasonably withheld. If a standard Collection route change is  
 1173 approved, Contractor must notify all affected Customers fourteen (14) days prior to Contractor  
 1174 implementing the new route. Failure to obtain City approval on route changes resulting in service  
 1175 day changes for Customers shall be subject to Liquidated damages as identified in Section 11.6.

1176 C. **Commingling of Routes.** During its Collection process, Contractor shall not commingle Solid Waste  
 1177 Collected within the City hereunder with Solid Waste Collected in other cities based on  
 1178 Contractor's methodology to account for Solid Waste Collected within the City, any other city, or  
 1179 on behalf of any other entity operating or existing within City that is not subject to this  
 1180 Agreement, and is specifically prohibited from combining Collection routes related to services  
 1181 provided pursuant to this Agreement with Collection routes for other jurisdictions it may service.  
 1182 Notwithstanding the forgoing, if Contractor utilizes a methodology satisfactory to the City  
 1183 Manager and CalRecycle to account for one (1) or more types of Solid Waste Collected within City.  
 1184 Approval of this Amendment constitutes, and Contractor obtains the written consent of the City  
 1185 Manager for Contractor to commingle such Solid Waste Collected with Solid Waste Collected from  
 1186 other jurisdictions, Contractor may commingle such Solid Waste Collected within the City in a  
 1187 Collection Vehicle with Solid Waste Collected from Premises in other jurisdictions.

1188 The City Manager may grant their consent for such commingling in their absolute and sole  
 1189 discretion if they determine the methodology used to account for commingled Solid Waste is  
 1190 reasonably likely to result in the City being in compliance with the Applicable Laws; and, similarly  
 1191 may withdraw their consent if they determine the methodology used to account for commingled  
 1192 Solid Waste is reasonably likely to result in the City not being in compliance with Applicable Laws.  
 1193 As of the effective date of this Agreement, commingling of routes for the Collection of Recyclable  
 1194 Materials and Organic Materials from Customers at Commercial Premises and Multi-Family  
 1195 Dwellings is approved by the City, using a methodology for tracking such types of Solid Waste  
 1196 generated in the City and in other jurisdictions that is premised upon Container capacity.

1197 D. **Holiday Collection.** Contractor, at its sole discretion, may choose not to provide Collection  
 1198 services on a Holiday. In such event, Contractor shall provide Single-Family Collection services on  
 1199 the day following the Holiday thereby adjusting subsequent work that week with normally  
 1200 scheduled Friday Collection Services being performed on Saturday; however, Customer service  
 1201 days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-Family,  
 1202 Commercial, and City Collection Services shall be adjusted as agreed between the Contractor and  
 1203 the Customer but must meet the minimum frequency requirement of one (1) time per week. The  
 1204 Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at  
 1205 least two (2) weeks prior to the change.

### 1206 5.3 Collection Standards

1207 A. **Servicing Containers.** Contractor shall Collect and return each Container to the location where the  
 1208 Occupant placed the Container for Collection. Contractor shall place the Containers upright with

1209 lids properly secured. For Customers other than Single-Family Residential Customers, Contractor  
 1210 may provide scout service, pull-out service, accessing Container enclosures with a key or access  
 1211 code, or locking Bin service as described in Exhibit B3.

1212 B. **Non-Collection, Courtesy Pick-Up Noticing.** Within thirty (30) days of the Effective Date,  
 1213 Contractor shall develop, and submit to the City Manager for review and approval, and as per the  
 1214 requirements of Section 4.10.A.4:

1215 1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of  
 1216 Discarded Materials; and,

1217 2. A template Courtesy Pick-Up Notice, for use in instances of improper set-out of Discarded  
 1218 Materials, which the Contractor, at its sole option, elects to Collect as a courtesy to the  
 1219 Customer.

1220 Per the requirements identified in Section 4.10.A, in the event that Contractor is prevented from  
 1221 Collecting Discarded Materials which have been placed for Collection, Contractor shall leave a  
 1222 Non-Collection Notice at the Customer Premises clearly explaining Contractor's reason for refusal  
 1223 to Collect the Discarded Materials. Contractor shall not be required to Collect Discarded Materials  
 1224 that are reasonably believed to contain Excluded Waste, pursuant to the requirements of Section  
 1225 5.8. Contractor may propose an alternative to a paper Non-Collection Notice left at Customer  
 1226 Premises (e.g., Customer notification via a phone call or e-mail) subject to City approval. Such an  
 1227 alternative must involve pro-active communication with Customer, initiated by Contractor.

1228 In the event that Contractor encounters circumstances at a Customer Premises which allow for  
 1229 safe Collection of Discarded Materials, but do not otherwise reflect proper set-out procedures  
 1230 (including, but not limited to spills not caused by the Contractor, Carts placed too close together,  
 1231 Carts placed in front of one another, and/or Carts placed too close to parked cars), Contractor  
 1232 shall Collect the material and leave a Courtesy Pick-Up Notice at the Customer Premises clearly  
 1233 explaining how the Customer failed to comply with proper set-out procedures.

1234 Contractor may educate the public on proper set-out procedures designed to maximize the  
 1235 efficiency of Collection (e.g., Carts spaced three (3) feet apart). However, Contractor  
 1236 acknowledges that such procedures are not practical in all circumstances and failure of the  
 1237 Customer to follow such procedures does not constitute a reason for non-Collection if the  
 1238 Discarded Materials may be safely and reasonably serviced. Contractor's route drivers shall  
 1239 dismount their Collection vehicles and reposition Containers as necessary to provide Collection  
 1240 service. Contractor may not require a Customer to set out the Customer's Containers in such a  
 1241 manner that would block vehicle access to Customer's driveway. Contractor and Customers may  
 1242 mutually agree to uncommon service locations if necessary for Collection in specific areas (e.g.,  
 1243 setting out all of the Carts in a court in a line down the middle of the court as opposed to  
 1244 Curbside.)

1245 Contractor may refuse to Collect Recyclable Materials or Organic Materials Containers that are  
 1246 contaminated in accordance with Exhibit B and Section 4.10 and shall leave an approved Non-  
 1247 Collection Notice informing Customer how to properly separate materials.

1248 C. **Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for  
 1249 Collection, fuel, and other vehicle fluids while providing services under this Agreement. If any

- 1250 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean up  
1251 all spills or leaks before leaving the site of the spill.
- 1252 Contractor shall not Transfer loads from one (1) vehicle to another on any Public Street, unless it is  
1253 necessary to do so because of mechanical failure, combustion of material in the truck, or  
1254 accidental damage to a vehicle.
- 1255 Contractor shall cover all open Roll-Off Boxes at the pickup location before Transporting materials  
1256 to an Approved Facility or the Designated Disposal Facility.
- 1257 Contractor shall conduct public outreach and staff training to Customers on best management  
1258 practices for litter abatement at no extra charge. Such best management practices include,  
1259 without limitation:
- 1260 1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers  
1261 with Courtesy Pick-Up Notices, which will serve as outreach and education to the  
1262 Customer. Photos of the Container will be taken by drivers, attached to the Customer's  
1263 account, and will be available to outreach and Customer service staff in order to  
1264 demonstrate to the Customer where a problem exists.
  - 1265 2. Outreach to Customer on importance of bagging lightweight materials such as plastic  
1266 bags, film plastics, foam peanuts, and other materials that can easily become litter due to  
1267 their lightweight nature.
  - 1268 3. Driver training on litter reduction techniques and litter removal best management  
1269 practices.
  - 1270 4. Affixing signage to the back of Contractor trucks which provides a phone number for  
1271 residents to report material spills.
- 1272 **D. Development and Review of Collection Specifications.** Contractor shall work with the City to  
1273 develop standard specifications for Collection Container enclosures at Commercial and Multi-  
1274 Family Premises. These specifications shall be developed to ensure that the Collection Container  
1275 enclosures are built to provide adequate space for and suitable configuration to allow the  
1276 Contractor to safely and efficiently service Recyclable Materials, Organic Materials, and Solid  
1277 Waste Containers. Contractor's Operations Manager or other appropriately qualified staff shall,  
1278 upon request by the City Manager, provide a review of plans for new Multi-Family and  
1279 Commercial development or project design drawings. Contractor shall provide comments and  
1280 recommendations resulting from the review in writing within ten (10) Working Days of receipt of  
1281 the documents for review. In each review report, Contractor shall comment on the acceptability of  
1282 the proposed enclosure arrangements in terms of the: i) adequacy of space for Recyclable  
1283 Materials, Organic Materials, and Solid Waste Containers; ii) accessibility of the Containers for  
1284 Collection, including whether additional charges (e.g., pull-out or scout service) would apply; and,  
1285 iii) ease of use by tenants.
- 1286 **E. No Commingling of Materials.** Contractor shall not commingle materials which have been Source  
1287 Separated with other material types (for example, Source Separated Recyclable Materials that  
1288 have been properly placed for Collection shall not be combined with Solid Waste or Source  
1289 Separated Organic Materials).

## 1290 5.4 Transfer and Processing Standards

1291 A. **Equipment and Supplies.** Contractor shall equip and operate the Approved Processing Facilities in  
1292 a manner to fulfill Contractor's obligations under this Agreement. Contractor is solely responsible  
1293 for the adequacy, safety, and suitability of the Approved Processing Facilities. Contractor shall  
1294 modify, enhance, and/or improve the Approved Processing Facilities as needed to fulfill Services  
1295 under this Agreement.

1296 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare  
1297 parts, maintenance supplies, Transfer, Transport, Processing equipment, and other consumables  
1298 as appropriate and necessary to operate the Approved Processing Facilities and provide all  
1299 services required by this Agreement. Contractor shall place the equipment in the charge of  
1300 competent operators. Contractor shall repair and maintain all equipment at its own cost and  
1301 expense.

1302 B. **Scales and Weighing.** Contractor is solely responsible for ensuring accurate weighing of all  
1303 materials entering and leaving the Approved Processing Facilities.

1304 1. **Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in  
1305 accordance with Applicable Law. All scales shall be linked to a centralized computer  
1306 recording system at the Approved Processing Facilities to record weights for all incoming  
1307 and outgoing materials. Contractor shall provide back-up generator(s) capable of  
1308 supplying power to the scales in the event of a power outage. Contractor shall promptly  
1309 arrange for use of substitute portable scales should its usual scales not be available for  
1310 whatever reason. Pending substitution of portable scales, Contractor shall, as necessary,  
1311 estimate the Tonnages of materials delivered to and Transported from the Approved  
1312 Processing Facilities, on the basis of delivery vehicle and Transfer trailer volumes, tare  
1313 weights, and/or other available facility weight records. These estimates shall take the  
1314 place of actual weights while scales are inoperable and shall be identified as estimates in  
1315 electronic records and reporting.

1316 2. **Tare Weights.** No less than thirty (30) calendar days after the Effective Date, Contractor  
1317 shall ensure that all vehicles used by Contractor to deliver Recyclable Materials, Organic  
1318 Materials, and Solid Waste to the Approved Processing Facilities are weighed to  
1319 determine unloaded ("tare") weights. Contractor shall electronically record the tare  
1320 weight, identify vehicle as Contractor owned, and provide a distinct vehicle identification  
1321 number for each vehicle. Contractor shall provide City with a report listing the vehicle tare  
1322 weight information upon request. Contractor shall promptly weigh additional or  
1323 replacement vehicles prior to placing them into service. Contractor shall check tare  
1324 weights at least annually, or within fourteen (14) calendar days of a City request and shall  
1325 re-tare vehicles immediately after any major maintenance or service event.

1326 3. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law,  
1327 but at least one (1) test and recalibration per scale every twelve (12) months or upon City  
1328 request.

1329 4. **Records.** Contractor shall maintain computerized scale records and reports that provide  
1330 information including date of receipt, inbound time, inbound and outbound weights of  
1331 vehicles, and vehicle identification number. Contractor shall also maintain computerized



1332 scale records and reports providing historical vehicle tare weights for each vehicle and the  
1333 date and location for each tare weight recorded.

1334 5. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on  
1335 video cameras at the Approved Processing Facilities, Contractor shall make those videos  
1336 available for City review during the Approved Processing Facility's operating hours, upon  
1337 request of the City, and shall provide the name of the driver of any particular load if  
1338 available.

## 1339 **5.5 Collection Vehicle Requirements**

1340 A. **Vehicle Requirements.** Contractor shall provide a fleet of Collection vehicles sufficient in number  
1341 and capacity to efficiently perform the work required by the Agreement in strict accordance with  
1342 its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection  
1343 vehicle used to respond to scheduled and unscheduled maintenance, service requests,  
1344 Complaints, and emergencies.

1345 1. Contractor shall operate no vehicles within the City over ten (10) years in age during the  
1346 Term of this Agreement. All such vehicles shall have watertight bodies designed to  
1347 prevent leakage, spillage, or overflow and shall comply with all Federal, State, and local  
1348 laws and regulations. Contractor's vehicles shall utilize Recycled motor oil to the extent  
1349 practicable.

1350 2. Contractor will annually investigate the ability to procure qualified RNG with their fueling  
1351 provider and will implement the use of such fuel to the maximum available extent  
1352 provided that the premium cost of qualified RNG does not cause Contractor's total fuel  
1353 expense to increase by more than ten percent (10%). Contractor shall make best efforts to  
1354 seek and utilize RNG that is purchased through a wheeling agreement with a party(ies),  
1355 provided that the wheeling agreement is for purchase of gas derived from Organic Waste  
1356 that has been Diverted from a landfill and Processed at an in-vessel digestion Facility that  
1357 is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets SB  
1358 1383 requirements. Contractor shall maintain records of the amount of RNG purchased  
1359 and shall report this information in accordance with Exhibit F. Contractor shall agree to  
1360 the City the right to report this RNG usage toward the City's fulfilment of its annual  
1361 recovered Organic Waste product procurement target in accordance with 14 CCR Section  
1362 18993.1.

1363 3. Collection vehicles shall have the capacity to Collect and Transport loose Cardboard  
1364 overages to ensure that Contractor is capable of complying with Exhibit B.

1365 4. Collection vehicles shall present a clean appearance while providing service under this  
1366 Agreement.

1367 5. Beginning January 1, 2023, Contractor will phase in all new Collection vehicles and trucks  
1368 for full City fleet replacement by December 31, 2026. The replacement schedule by  
1369 calendar year is:

1370 a. 2023: Fourteen (14) vehicles replaced

1371 b. 2024: Fourteen (14) vehicles replaced

1372 c. 2025: Five (5) vehicles replaced

- 1373 d. 2026: Eight (8) vehicles replaced
- 1374 6. No later than April 1, 2023, Contractor will operate one (1) electric Collection vehicle to be  
1375 used full-time on a Recyclable Materials route five (5) days per week in the City. Republic  
1376 will meet and confer with City to determine a plan for City to approve deployment of an  
1377 electric Collection vehicle.
- 1378 B. **Vehicle Display.** Contractor's name, local or toll-free telephone number, and a vehicle number  
1379 shall be visibly printed or painted in letters not less than five (5) inches in height on both sides and  
1380 the rear of each Collection Vehicle. Additionally, the words "Serving the City of Garden Grove"  
1381 shall be displayed on both sides of every Residential Collection vehicle in letters not less than  
1382 three (3) inches in height.
- 1383 C. **Vehicle Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is  
1384 operating properly. Vehicles that are not operating properly shall be taken out of service until they  
1385 are repaired and operate properly. Contractor shall repair or arrange for the repair of all its  
1386 vehicles and equipment for which repairs are needed because of accident, breakdown, or any  
1387 other cause so as to maintain all equipment in a safe and operable condition. City Manager may  
1388 inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to  
1389 determine compliance with sanitation requirements.
- 1390 D. **Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall  
1391 conform to applicable Federal, State, County, and City noise level regulations, including the  
1392 requirement that the noise level during the stationary compaction process not exceed sixty (60)  
1393 decibels with the exception of sixty-five (65) decibels for one (1) minute duration. All decibel  
1394 readings shall be based on a distance of ten (10) feet from any part of the vehicle. The City may  
1395 request Contractor to check any piece of equipment for conformance with the noise limits in  
1396 response to Complaints and/or when the City Manager believes it is reasonable to do so.
- 1397 E. **Leaks and Spill Mitigation.** Contractor shall clean up any leaks or spills from its vehicles per the  
1398 National Pollutant Discharge Elimination System (NPDES) permit in effect at the time. Contractor  
1399 shall notify City of any leaks or spills reported to Contractor or observed by any employee of  
1400 Contractor. Contractor shall ensure that leaks or spills are remediated within two (2) hours of  
1401 notification or observation. Contractor shall notify City immediately upon remediation of leaks or  
1402 spills. No pollutant that leaks, spills, or otherwise escapes from any Contractor vehicle may be  
1403 washed into a storm drain or otherwise allowed to enter a storm drain at any time. Contractor  
1404 must take all measures necessary to prevent the discharge of any such pollutant into a storm  
1405 drain. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be  
1406 equipped with absorbent for such cleanup efforts. Contractor shall provide photographic evidence  
1407 to the City for each clean up. Payment of Liquidated Damages for failure to clean up leaks or spills  
1408 within the required timeframe, and/or for failure to follow the cleanup procedures, does not  
1409 excuse Contractor from the clean-up requirements contained in this Section 5.5.E.
- 1410 F. **Costs of Operation and Damages.** Contractor shall be responsible for any costs incurred in  
1411 connection with ensuring all Collection Vehicles comply with all Applicable Laws and regulations,  
1412 including without limitation any such laws and regulations that may now exist or hereinafter be  
1413 adopted relating to noise, fuels, emission standards, or weight limits.

**1414 5.6 Container Requirements**

1415 A. **Containers Provided to Customers.** Contractor shall provide Containers to new Customers  
1416 requesting service initiation within three (3) Working Days of Contractor's first receipt of the  
1417 Customer request. Contractor-provided Containers shall be new and shall comply with the  
1418 Container standards set forth in this Section 5.6. All Containers shall display the Contractor's  
1419 name, logo, telephone number, website, capacity (yards or gallons) and some identifying  
1420 inventory or serial number. All Residential and Commercial Customers using Carts for services will  
1421 receive new Carts in calendar year 2027 so that all Residential and Commercial Cart Customers will  
1422 have new, color compliant Carts with SB 1383 by December 31, 2027.

**1423 B. Container Standards.**

1424 1. All Carts shall be manufactured by injection or rotational molding methods. The Cart  
1425 handles and handle mounts may be an integrally molded part of the Cart body or molded  
1426 as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or  
1427 pushing the Cart or lifting the lid. Pinch points are unacceptable. Carts provided to  
1428 Customer shall have a useful life of ten (10) or more years or more as evidenced by a  
1429 manufacturer's warranty or other documentation acceptable to the City.

1430 2. Carts shall remain durable, and at a minimum, shall meet the following durability  
1431 requirements to satisfy its intended use and performance, for the Term of this  
1432 Agreement: maintain its original shape and appearance; be resistant to kicks and blows;  
1433 require no routine maintenance and essentially be maintenance free; not warp, crack,  
1434 rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its  
1435 intended use; resist degradation from ultraviolet radiation; be incapable of penetration by  
1436 biting or clawing of household pets (i.e., dogs and cats); the bottoms of Cart bodies must  
1437 remain impervious to any damage, that would interfere with the Cart's intended use after  
1438 repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface;  
1439 all wheel and axle assemblies are to provide continuous maneuverability and mobility as  
1440 originally designed and intended.

1441 3. Carts shall be resistant to: common household or Residential products and chemicals;  
1442 human and animal urine and feces; and, airborne gases or particulate matter currently  
1443 present in the ambient air of the Service Area.

1444 4. All Bins with a capacity of one (1) cubic yard or more shall meet applicable Federal  
1445 regulations for Bin safety and be covered with attached lids.

1446 5. Contractor shall obtain the City's written approval of Container material, design, colors,  
1447 labeling, and other specifications before acquisition, painting, labeling, or distribution  
1448 occurs.

1449 6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that  
1450 contain a minimum of thirty percent (30%) post-consumer Recycled plastic content, unless  
1451 such requirement is waived by the City Manager.

1452 7. Container lids shall be designed such that the follow requirements are met:

1453 a. Prevents the intrusion of rainwater and vectors;

1454 b. Prevents the emissions on odors;

- 1455 c. Enables the free and complete flow of material from the Container during the dump  
1456 cycle without interference with the material already deposited in the truck body or  
1457 the truck body itself and its lifting mechanism;
- 1458 d. Permits users of the Cart to conveniently and easily open and shut the lid throughout  
1459 the serviceable life of the Cart;
- 1460 e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of  
1461 tension, to a position whereby it may rest against the backside of the Cart body;
- 1462 f. Prevents damage to the Container body, the lid itself, or any component parts  
1463 through repeated opening and closing of the lid by Generators or in the dumping  
1464 process as intended;
- 1465 g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All  
1466 lid hinges must remain fully functional and continually hold the lid in the original  
1467 designed and intended positions when either opened or closed or any position  
1468 between the two (2) extremes; and,
- 1469 h. Designed and constructed such that it prevents physical injury to the user while  
1470 opening and closing the Cart.
- 1471 8. Containers shall be stable and self-balancing in the upright position, when either empty or  
1472 loaded to its maximum design capacity with an evenly distributed load, and with the lid in  
1473 either a closed or an open position. Containers shall be capable of maintaining upright  
1474 position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied  
1475 from any direction.
- 1476 9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an  
1477 evenly distributed load equal in weight to its maximum design capacity on a level, sloped  
1478 or stepped surface.
- 1479 10. All such Containers shall be one hundred percent (100%) Recyclable at the end of their  
1480 useful life.
- 1481 11. All Containers shall be designed and constructed to be watertight and prevent the leakage  
1482 of liquids.
- 1483 **C. Container Colors.** Contractor shall provide all Customers with Collection Containers that comply  
1484 with the Container color requirements specified in this Section 5.6, or as otherwise specified in 14  
1485 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors shall  
1486 be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; and the  
1487 lids and bodies shall be uniform for each Container type, as follows:
- 1488 1. Recyclable Materials Container lids shall be blue;
- 1489 2. Organic Materials Container lids shall be green;
- 1490 3. Solid Waste Container lids shall be black or grey; and,
- 1491 4. Source Separated Food Waste Container lids shall be brown.
- 1492 Hardware such as hinges and wheels on the Containers may be a different color than specified  
1493 above. All Containers shall comply with these color requirements, including Split-Bins. Each  
1494 section of the Split-Bin shall be painted in accordance with the color requirements in this Section  
1495 5.6 for the applicable Discarded Material type intended for that segregated section of the Bin

1496 (e.g., a Split-Bin for Solid Waste and Recyclable Materials would be half gray and half blue,  
1497 respectively).

1498 **D. Container Labeling.** Refuse, Recyclable Materials, and Organic Materials Carts shall carry  
1499 stickers/labels or other identifying markings indicating the materials that should and should not be  
1500 placed in each Container.

1501 All Carts that are not currently in Contractor's inventory shall include a high-quality educational  
1502 information label using in-mold technology, such that all labeling shall be integral to the outside of  
1503 the lid, through the use of injection molding, and shall not be affixed to any part of the Cart or lid  
1504 using adhesives. Notwithstanding the provisions of this Section 5.6, or the requirements of SB  
1505 1383, the in-mold lid label shall, at a minimum, include for each Container: primary materials  
1506 accepted; a clear indication of Prohibited Container Contaminants for that Container type,  
1507 notification forbidding Hazardous Waste and describing proper Disposal thereof. Design for the in-  
1508 mold labels must be approved by City prior to ordering labels or Carts. Lids shall be replaced when  
1509 in-mold labels become worn, but no later than ninety (90) days of request from City. Information  
1510 on the Refuse Carts shall include the telephone number to call for Contractor for Bulky Item  
1511 pickups and for general Customer service. Contractor may also add to the required Cart label a  
1512 scannable Quick Response ("QR") Code that can be scanned by Customer's personal digital  
1513 devices, including cell phones, to allow Customer to review information including Cart materials  
1514 accepted, Prohibited Container Contaminants, and other information concerning SB 1383  
1515 programs that can be updated over time to reflect new information or program changes. All Carts  
1516 shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the Term  
1517 of this Agreement. In-mold labels shall be designed to include English, Spanish, and Vietnamese.  
1518 Hot stamps shall be on the top of the lid and/or on the body of the Cart and shall be reviewed and  
1519 approved by the City.

1520 **E. Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing or  
1521 replacing Containers when Contractor determines the Container is no longer suitable for service;  
1522 or when the City or Customer requests replacement of a Container that does not properly  
1523 function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be responsible for  
1524 acquiring and providing the replacement Containers. Contractor shall repair or replace all  
1525 damaged or broken Containers within three (3) Working Days of Customer or City request. Minor  
1526 cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts  
1527 shall be readily repairable by the Contractor personnel. All repairs must restore the Cart to its full  
1528 functionality to meet the design and performance requirements as set for herein.

1529 Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer  
1530 requests for service, requests for change in Service Levels (size, type, or number of Containers)  
1531 from current subscribers, and requests for replacement due to damage. All replacement  
1532 Containers requested by Customers and any newly deployed Containers for new services will be  
1533 new and SB 1383 color compliant.

1534 Contractor shall provide to Single-Family Customers at least one (1) free Cart replacement per any  
1535 twelve (12) month period for any reason, upon Customer request. If Customer requests more than  
1536 one (1) Cart replacement per any twelve (12) month period, Contractor shall make Carts available  
1537 at the City-approved Rate for such services. In addition, Single-Family Customers may also request  
1538 one (1) Cart size exchange per Rate Period at no charge. All such Containers shall be provided

1539 within three (3) Working Days of request. Contractor's failure to comply with the Container  
1540 requirements may result in assessment of Liquidated Damages pursuant to Section 11.6.

1541 All Bins will be replaced on the Contractor's normal replacement schedule and any new Bins  
1542 placed into service will comply with the color and labeling requirements of SB 1383. All Refuse,  
1543 Source Separated Recyclable Materials, and/or Organic Materials Bins at a Customer location shall  
1544 be uniform in color.

1545 **F. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and  
1546 functional condition, and present a clean appearance. Contractor shall repair or replace all  
1547 Containers damaged by Collection operations in accordance with standards specified in this  
1548 Section 5.6, unless damage is caused by Customer's gross negligence, in which case, the Customer  
1549 will be billed for repair or replacement of Container at a City-approved Rate for such service. All  
1550 Containers shall be maintained in a functional condition.

1551 Contractor shall steam clean and/or repaint all Containers as needed to present a clean  
1552 appearance. Contractor shall offer steam cleaning service (or clean Container exchange) to  
1553 Customers requesting such service and may charge Customers for such cleaning (or Container  
1554 exchange).

1555 Contractor shall remove graffiti from Containers within two (2) Working Days or notification at no  
1556 additional charge.

1557 Upon request from the City Manager, Contractor shall provide the City with a list of Containers  
1558 and the date each Container was painted and maintained.

1559 **G. Monitoring and Cleaning of Container Enclosures.** Contractor shall work with the City Manager in  
1560 identifying and resolving continual problems with overflowing Carts, Bins, or within Container  
1561 enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out  
1562 any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by  
1563 City. Contractor shall provide photographic evidence of overflowing Bins to City. Contractor may  
1564 bill Customers for any such services when they are required by City in an amount not to exceed  
1565 Contractor's actual and reasonable costs incurred in doing so.

## 1566 **5.7 Personnel**

1567 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the  
1568 services required by this Agreement in a safe and efficient manner.

1569 Contractor shall use its best efforts to assure that all employees present a neat appearance and  
1570 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,  
1571 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from Customers  
1572 or members of the public.

1573 **B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,  
1574 issued by the California Department of Motor Vehicles. Contractor shall use the Class II California  
1575 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

1576 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all employees  
1577 who operate Collection vehicles or equipment. Contractor shall train its employees involved in  
1578 Collection to identify, and not to Collect, Excluded Waste. Upon the City Manager's request,  
1579 Contractor shall provide a copy of its safety policy and safety training program, the name of its  
1580 safety officer, and the frequency of its trainings.

1581 D. **Designated Staff.**

1582 1. **Contractor's Contract Administrator.** Contractor shall designate at least one (1) qualified  
1583 employee as City's primary point of contact with Contractor who is principally responsible  
1584 for Collection operations and resolution of service requests and Complaints. Such  
1585 individual shall be empowered to negotiate on behalf of and bind Contractor with respect  
1586 to any changes in scope, dispute resolution, compensation adjustments, and service-  
1587 related matters which may arise during the Term of this Agreement. Such individual is  
1588 defined as Contractor's Contract Administrator.

1589 2. **Field Supervisor.** Contractor shall designate one (1) qualified full-time employee as  
1590 supervisor of field operations. The designated Field Supervisor will devote at least fifty  
1591 percent (50%) of their time in the City in the field checking on Collection operations,  
1592 including responding to Customer requests, inquiries, and Complaints.

1593 3. **Recycling Coordinator.** To achieve a high level of Recycling public education and  
1594 awareness, the Contractor shall dedicate the equivalent of two and one-half (2.5) full-time  
1595 Recycling Coordinators and the equivalent of one-half of a full-time route auditor or  
1596 compliance monitor to the City to complete outreach to Residential, Multi-Family and  
1597 Commercial Customers, and develop and implement all public education and outreach  
1598 activities required under the Agreement. The Recycling Coordinators and route auditors  
1599 shall conduct outreach, promote waste reduction, Recycling, Diversion programs, and  
1600 provide technical assistance to Multi-Family and Commercial Customers.

1601 a. The Recycling Coordinators shall work exclusively on the City programs and services  
1602 and shall not have other, non-City responsibilities or other City responsibilities not  
1603 related to Recycling Coordinator responsibilities in the City.

1604 b. The Recycling Coordinators shall visit each school located within the City each Rate  
1605 Period to discuss environmental issues with students, read books and facilitate craft  
1606 activities.

1607 c. Contractor shall provide fully trained and experienced Recycling Coordinators on or  
1608 before the start of services under this Agreement. In the event of resignation of a  
1609 Coordinator, Contractor shall have a maximum of ninety (90) calendar days to  
1610 replace the Coordinator. Contractor shall notify City, in writing, of the name,  
1611 education, background and experience, including a resume, and a list of three (3)  
1612 references for each Coordinator prior to commencing operations and whenever  
1613 there is a change in the staffing of the positions. Contractor shall provide Recycling  
1614 Coordinators that can speak Spanish or Vietnamese in addition to English.

1615 d. Upon City request, Contractor shall designate a different Coordinator if the City is  
1616 dissatisfied with the performance of one (1) of the designated Coordinators.

1617 e. The Contractor shall allow the City a reasonable opportunity to review, request  
1618 modifications to, and approve all materials including, but not limited to: print, radio,

1619 television, or internet media before publication, distribution, and/or release. The  
1620 Recycling Coordinators shall also work cooperatively with any City-appointed  
1621 outreach and education consultant.

1622 E. **Key Personnel.** Contractor shall make every reasonable effort to maintain the stability and  
1623 continuity of Contractor's staff assigned to perform the services required under this Agreement.  
1624 Contractor shall notify the City of any changes in Contractor's key staff to be assigned to perform  
1625 the services required under this Agreement and shall obtain the approval of the City Manager of  
1626 all proposed key staff members who are to be assigned to perform services under this Agreement  
1627 prior to any such performance.

1628 Notwithstanding City's approval of Contractor's personnel, Contractor shall not be relieved from  
1629 any liability resulting from the work to be performed under this Agreement, nor shall Contractor  
1630 be relieved from its obligation to ensure that its personnel maintain all requisite certifications,  
1631 licenses, and the like, and Contractor shall ensure that its personnel at all times fully comply with  
1632 Applicable Law.

1633 At any point during the Term of this Agreement, the City may request, in writing, that any of  
1634 Contractor's employees be reassigned such that they no longer perform any work relating to this  
1635 Agreement and shall provide a statement describing the reason for such request. Within twenty-  
1636 four (24) hours of Contractor's receipt of such request, or such other time agreed to by City in  
1637 writing, Contractor shall remove the identified employee(s) from performing any work related to  
1638 this Agreement; the vacated position(s) must be filled by Contractor with a suitable replacement  
1639 within ten (10) calendar days and Contractor shall immediately fill the vacated position with a  
1640 temporary replacement if required to perform, without delay, all services required under this  
1641 Agreement.

## 1642 **5.8 Hazardous Waste Inspection and Handling**

1643 A. **Inspection Program and Training.** Contractor shall develop a load inspection program that  
1644 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)  
1645 management of wastes; and, (iv) record keeping and emergency procedures.

1646 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i)  
1647 the effects of Hazardous Substances on human health and the environment; (ii) identification of  
1648 prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle  
1649 drivers shall inspect Containers before Collection when practical.

1650 B. **Response to Excluded Waste Identified During Collection.** If Contractor determines that material  
1651 placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's  
1652 employees, the Contractor shall have the right to refuse to accept such material. The Generator  
1653 shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator  
1654 cannot be reached immediately, the Contractor shall, before leaving the Premises, leave Non-  
1655 Collection Notice, which indicates the reason for refusing to Collect the material and lists the  
1656 phone number of a facility that accepts the Excluded Waste or a phone number of an entity that  
1657 can provide information on proper Disposal of the Excluded Waste. Under no circumstances shall  
1658 Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly  
1659 containerized Excluded Waste from a Collection Container.



1660 If Excluded Waste is found in a Collection Container or Collection area that could possibly result in  
1661 imminent danger to people or property, the Contractor shall immediately notify the Fire  
1662 Department.

1663 C. **Response to Excluded Waste Identified at Processing or Disposal Facility.** Materials Collected by  
1664 Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In  
1665 the event that load checkers and/or equipment operators at such facility identify Excluded Waste  
1666 in the loads delivered by Contractor, such personnel shall remove these materials for storage in  
1667 approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for removal of  
1668 the Excluded Wastes at its cost by permitted haulers in accordance with Applicable Laws and  
1669 regulatory requirements. The Contractor may at its sole expense attempt to identify and recover  
1670 the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost of  
1671 this effort, as well as the cost of Disposal shall be chargeable to the Generator.

## 1672 **5.9 Contract Management**

1673 The City Manager shall monitor and administer this Agreement. Contractor's Contract Administrator  
1674 shall be responsible for working closely with the City Manager in the monitoring and administration of  
1675 this Agreement.

1676 The Contractor's Contract Administrator shall meet and confer with the City Manager to resolve  
1677 differences of interpretation and implement and execute the requirements of this Agreement in an  
1678 efficient and effective manner that is consistent with the stated objectives of this Agreement.

1679 The City Manager and the Contractor's Contract Administrator shall hold contract management  
1680 meetings monthly or at such other frequency as designated by the City Manager. This meeting is  
1681 intended to review the status of Contractor's implementation of programs and services required under  
1682 this Agreement, coordinate shared efforts between the parties, and such other agenda items as are  
1683 deemed appropriate by the Parties for such meetings.

1684 From time to time the City Manager may designate other agents of City to work with Contractor on  
1685 specific matters. In such cases, those individuals should be considered designee of the City Manager for  
1686 those matters to which they have been engaged. Such designee shall be afforded all of the rights and  
1687 access granted thereto. In the event of a dispute between the City Manager's designee and Contractor,  
1688 the City Manager's determination shall be conclusive.

1689 City Manager shall have the right to observe and review Contractor operations and Processing Facilities  
1690 and enter Premises for the purposes of such observation and review, including review of Contractor's  
1691 records, during reasonable hours with reasonable notice. In no event shall Contractor prevent access to  
1692 such Premises for a period of more than three (3) calendar days after receiving such a request. City  
1693 Manager shall be granted access to Contractor's information systems and Customer service database in  
1694 accordance with Section 4.8.

## 1695 **5.10 Minimum Diversion Requirements**

1696 A. **General.** Contractor shall Divert from landfilling a minimum of twenty percent (20%) of all  
1697 Discarded Material it Collects under this Agreement excluding Construction and Demolition  
1698 Debris. Compliance will be measured on a calendar year basis, beginning with calendar year 2023.  
1699 Discarded Materials Collected shall only be considered to have been Recycled or Diverted as

1700 required under this Agreement if it is deemed to be Diversion by CalRecycle in connection with  
 1701 efforts to meet City's Diversion goals. The Contractor shall make reasonable efforts to assure that  
 1702 Recyclable Materials and Organic Materials are Transported, handled at the Approved Processing  
 1703 Facilities, so as to prevent or minimize the amount of such materials taken to a landfill and to  
 1704 maximize Diversion credits for the City. Contractor shall provide documentation to the City within  
 1705 thirty (30) days of the end of each calendar year stating and supporting that calendar year's  
 1706 Diversion rate. Diversion from sources other than Contractor's Collection and Diversion efforts  
 1707 (such as source reduction, reuse, or Recyclable Materials and Organic Materials Diverted by other  
 1708 enterprises, Collection of materials that are not the subject of this Agreement, or the efforts of  
 1709 Self-Haulers) is not to be counted as Diversion achieved by Contractor. Transformation may be  
 1710 used as a method to achieve the minimum Recycling requirements to the extent that is allowable  
 1711 as Diversion as defined by CalRecycle.

1712 Contractor shall Divert from landfilling the State-mandated Construction and Demolition Debris  
 1713 Diversion percentage of all Construction and Demolition Debris loads Contractor Collects under  
 1714 this Agreement. Contractor shall provide a Diversion report for each construction and demolition  
 1715 project performed by Contractor.

1716 Upon the request of either Party, not more often than once every two (2) years, the Parties agree  
 1717 to meet and confer regarding adjustments to the minimum Diversion rate, based on factors  
 1718 including waste composition data provided by Contractor, trends in source reduction and reuse,  
 1719 trends in third party Diversion, extent of reverse logistics, emerging methods of Processing and  
 1720 Recycling/reusing new waste materials, the availability of markets, Transportation constraints,  
 1721 embargoes, and the impact of scavenging. City shall consider such information provided by  
 1722 Contractor and other industry data and shall, at its sole discretion, determine if any adjustments  
 1723 to the minimum Diversion requirements shall be made, and such changes must be approved by  
 1724 the City Council before becoming effective. If these Diversion requirements are not met, City may  
 1725 instruct Contractor to initiate new programs at Contractor's expense in order for this goal to be  
 1726 met on a consistent basis.

1727 **B. Implementation of Additional Diversion Services.** In the event City does not meet the current  
 1728 Diversion goal imposed by AB 939 or any other standard subsequently established by State  
 1729 Legislature with respect to all waste generated in City, City may direct Contractor to perform  
 1730 additional services (including the implementation of new Diversion programs) or modify the  
 1731 manner in which it performs existing services, and Contractor agrees to do so and may request a  
 1732 compensation adjustment under Section 3.6. Pilot programs and innovative services which may  
 1733 entail new Collection methods, and use of new or alternative waste Processing and Disposal  
 1734 technologies are included among the kinds of changes which City may direct.

## 1735 **ARTICLE 6.**

### 1736 **RECORD KEEPING AND REPORTING**

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#### 1737 **6.1 Record Keeping**

1738 Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational,  
 1739 programmatic, and other records, and associated documentation, related to its performance as shall be  
 1740 necessary to provide detailed and accurate reports under this Agreement, and to demonstrate  
 1741 compliance with this Agreement and Applicable Law. Unless otherwise required in this Article 6,

1742 Contractor shall retain all records and data required to be maintained by this Agreement for the Term of  
1743 this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in  
1744 chronological and organized form that is readily and easily interpreted to facilitate the flexible use of  
1745 data to structure reports. Contractor's records shall be stored in one (1) central location, physical or  
1746 electronic, that can be readily accessed by Contractor. Upon request, any such records shall be retrieved  
1747 in a timely manner, not to exceed five (5) Working Days of a request by the City Manager, and made  
1748 available to the City Manager; including any record or documentation that City, may deem necessary,  
1749 for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB  
1750 1826, AB 876, AB 901, SB 1383, as amended.

1751 Contractor shall maintain adequate record security to preserve records from events that can be  
1752 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and  
1753 records shall be protected and backed-up. The City reserves the right to require the Contractor to  
1754 maintain Customer service and compliance records required herein using a City-approved web-based  
1755 software platform, at Contractor's expense. To the extent that Contractor utilizes its computer systems  
1756 to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a  
1757 monthly basis, save all system-generated reports supporting those record keeping and reporting  
1758 requirements in a static format in order to provide an audit trail for all data required by City, as  
1759 requested, under this Agreement.

1760 At a mutually agreed upon time during normal business hours, but within five (5) Work Days of a written  
1761 request from City, Contractor shall provide to the City the Contractor's data and records with respect to  
1762 the matters covered by this Agreement and Applicable Law. Contractor shall permit the City, or its  
1763 designee, to audit, examine, and make excerpts or transcripts from such data and records, and make  
1764 copies of all data relating to all matters covered by this Agreement and the Applicable Law. Contractor  
1765 may designate Customer information Applicable Law as confidential. Contractor shall maintain such data  
1766 and records in an accessible location and condition for a period of not less than five (5) years following  
1767 the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier  
1768 disposition. Contractor agrees that all data requested by City regarding its business operations,  
1769 Customer lists, routing, Tonnage, Service Levels, work orders issued from dispatch, and Customer  
1770 service logs, shall be made available to the City Manager or their designee upon request and within the  
1771 timelines required by this Section 6.1. City is subject to the California Public Records Act (Government  
1772 Code section 6250, *et. seq.*) and nothing in this Agreement is intended to impair City's requirements or  
1773 obligations under that Act.

1774 City is subject to the California Public Records Act (Gov. Code, §§ 6250 - 6276.48) ("CPRA"). City and  
1775 Contractor agree that the confidential and Proprietary Information designated by Contractor asserts an  
1776 exemption for "trade secrets" under subdivision (k) of Government Code section 6254, Evidence Code  
1777 section 1060, Civil Code section 3426.1(d) and Public Resources Code section 40062(a). In the event that  
1778 City receives a CPRA request seeking disclosure of information Contractor has designated as confidential  
1779 and Proprietary, City shall promptly notify Contractor of the request and provide Contractor a  
1780 reasonable opportunity to comment on the pending request before City acts upon it. Contractor shall  
1781 have the right to seek an order from the Superior Court to limit or enjoin the City's disclosure of such  
1782 records. City agrees that it will assert that the request, to the extent it seeks Confidential Information,  
1783 seeks information that Contractor has designated confidential and Proprietary and is exempt from  
1784 disclosure pursuant to the trade secret exemption under subdivision (k) of Government Code section  
1785 6254 and any other applicable exemption. In the event City is subject to an action seeking to enforce the  
1786 CPRA for any information designated confidential and Proprietary Information hereunder, Contractor

1787 shall defend and indemnify City in such litigation, which indemnity shall cover all of City's costs and  
1788 expenses, including attorney's fees.

1789 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and  
1790 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City  
1791 regards its ability to prove where Collected Recyclable Materials, Organic Materials, and Solid Waste are  
1792 taken for Transfer, Processing, or Disposal. Contractor shall maintain records which can establish where  
1793 Recyclable Materials, Organic Materials, and Solid Waste Collected were Transferred, Processed, or  
1794 Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor  
1795 shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of  
1796 the Agreement. Contractor shall provide these records to City (upon request or at the end of the record  
1797 retention period) in an organized and indexed manner rather than destroying or Disposing of them.

## 1798 **6.2 Report Submittal Requirements**

1799 The parties acknowledge that City will require reporting by Contractor at various intervals by which  
1800 information important to City can be compiled and analyzed. Throughout the Term the parties agree to  
1801 work together to address City's needs with respect to the information to be contained in reports  
1802 prepared by Contractor. The following is intended as a starting point in order to have established an  
1803 objective baseline for reporting, but the frequency and content of the reports called out below may be  
1804 changed by agreement of the parties, provided any such change is approved by the City Manager in  
1805 writing. Records related to performance of this Agreement shall be maintained by Contractor in forms  
1806 and by methods that facilitate flexible use of data contained in them to structure reports, as needed.  
1807 The format of each report shall be approved by City. Contractor agrees to submit all reports in an  
1808 electronic format compatible with City's software/computers at no charge to City. Monthly reports shall  
1809 be submitted within twenty (20) calendar days after the end of the report month. Quarterly reports shall  
1810 be submitted within twenty (20) calendar days after the end of the calendar quarter. Annual reports  
1811 shall be submitted within forty-five (45) calendar days after the end of the calendar year.

1812 Monthly, quarterly, and annual reports shall include at a minimum, all data and information described in  
1813 Exhibit F, unless otherwise specified under this Agreement.

1814 Contractor may propose report formats that are responsive to the objectives and audiences for each  
1815 report. The format of each report shall be approved by the City Manager in their sole discretion. City  
1816 Manager may, from time to time during the Term, review, and request changes to Contractor's report  
1817 formats and content and Contractor shall not unreasonably deny such requests.

1818 Contractor shall submit all reports to the City Manager electronically via e-mail using software  
1819 acceptable to the City. The City reserves the right to require the Contractor to maintain records and  
1820 submit the reports required herein through use of a City-selected web-based software platform, at the  
1821 Contractor's expense.

1822 City reserves the right to require Contractor to provide additional reports or documents as City Manager  
1823 reasonably determines to be required for the administration of this Agreement or compliance with  
1824 Applicable Law.

### 1825 **6.3 Performance Review**

1826 City may hold a public hearing, or other meeting, on or about the two-year anniversary of the start of  
1827 this Agreement, and each twelve (12) months thereafter, at which time Contractor shall be present and  
1828 shall participate, to review the Discarded Materials Collection, source reduction, Processing and other  
1829 Diversion services and overall performance. The purpose of the hearing is to provide for a discussion and  
1830 review of technological, economic, and regulatory changes in Collection, source reduction, Recycling,  
1831 Processing and Disposal to achieve a continuing, advanced Discarded Materials Collection, source  
1832 reduction and Recycling and Disposal system; and to ensure services are being provided with adequate  
1833 quality, effectiveness, and economy.

1834 Forty-five (45) days after receiving notice from City of a Performance Review Hearing, Contractor shall,  
1835 at a minimum, submit a report to City indicating the following:

- 1836 • Changes recommended and/or new services to improve City's ability to meet the goals of AB  
1837 939, AB 341, AB 1826, SB 1383, and any current or future regulations, and to contain costs and  
1838 minimize impacts on Rates. A specific plan for regulatory compliance shall be included.
- 1839 • Any specific plans and proposed costs for provision of changed or new services by Contractor.
- 1840 • Results of the most recent route audit as described in Section 4.11.

1841 The reports required by this Agreement regarding Customer Complaints shall be used as one (1) basis  
1842 for review. Contractor may submit other relevant performance information and reports for  
1843 consideration. City may request Contractor to submit specific information for the hearing. In addition,  
1844 any Customer may submit comments or Complaints during or before the hearing, either orally or in  
1845 writing, and these shall be considered.

1846 Topics for discussion and review at the Performance Review Hearing shall include, but shall not be  
1847 limited to, services provided, route audit results, feasibility of providing new services, application of new  
1848 technologies, Customer Complaints, amendments to this Agreement, developments in the law, new  
1849 initiatives for meeting or exceeding AB 939's goals, regulatory constraints, and Contractor performance.  
1850 City and Contractor may each select additional topics for discussion at any Performance Review Hearing.

1851 Not later than sixty (60) days after the conclusion of each Performance Review Hearing, City may issue a  
1852 report. As a result of the review, City may require Contractor to provide expanded or new services  
1853 within a reasonable time and for reasonable Rates and compensation and City may direct or take  
1854 corrective actions for any performance inadequacies.

### 1855 **6.4 Biennial Audit**

1856 A. **General.** Contractor shall fund biennial audits as described below. The scope of the audit, and  
1857 auditing party, will be determined by City and the scope may include, but is not limited to:

- 1858 • Compliance with terms of this Agreement;
- 1859 • Customer Service Levels and Billing;
- 1860 • Fee payments;
- 1861 • Receipts;

- 1862       • Tonnage;
- 1863       • Complaint log;
- 1864       • Compliance with Mandatory Commercial Recycling, Mandatory Commercial Organics  
1865       Recycling, and SB 1383; and,
- 1866       • Verification of Diversion rate.
- 1867       The first audit, to be performed during 2024, will be based on the Contractor’s reports and  
1868       records for the period from commencement of the Agreement through December 31, 2023.  
1869       Audits will be performed every other year thereafter (the biennial audit). Contractor will  
1870       reimburse to the City the cost of such audits up to fifty thousand dollars (\$50,000) for the first  
1871       audit, and fifty thousand dollars (\$50,000) for each subsequent biennial audit in 2024 dollars. The  
1872       fifty thousand dollars (\$50,000) amount in subsequent years shall be adjusted annually by 2.5%  
1873       per year.
- 1874       Should an audit by the City disclose that Franchise or other fees payable by the Contractor were  
1875       underpaid by three percent (3%) or more, or that more than two percent (2%) of the Customers  
1876       were inaccurately billed, for the period under review, Contractor shall reimburse the City for the  
1877       actual cost of the audit to the extent it exceeded fifty thousand dollars (\$50,000) and shall also  
1878       pay for additional audit costs if City determines it is necessary to expand the scope of the audit.
- 1879       B.   **Payments and Refunds.** Should an audit by the City disclose that the Franchise Fees payable by  
1880       the Contractor were underpaid or that Customers were overcharged for the period under review,  
1881       Contractor shall pay to City any underpayment of Franchise Fees and/or refund to Contractor's  
1882       Customers any overcharges within thirty (30) days following the date of the audit. Should an audit  
1883       disclose that Franchise Fees were overpaid, City shall refund to Contractor the amount of the  
1884       overpayment within the same time frame. Should the audit disclose that Customers were  
1885       undercharged, Customers may be billed for up to, but not exceeding, ninety (90) days of services  
1886       not previously billed by Contractor or City.

## 1887   **6.5   Disaster Plan**

1888       Upon request of City, Contractor shall assist City in the preparation of an updated draft disaster debris  
1889       cleanup implementation plan that sets forth procedures for Collection of debris following a major  
1890       disaster such as an earthquake, flood, fire, or other similar event. The disaster plan shall address  
1891       priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe  
1892       communication plans, list key contact Persons, and provide maps showing proposed sites for stockpiling  
1893       of disaster debris that cannot be Transported to the landfill. Contractor shall coordinate the  
1894       implementation of the plan with City's emergency service teams.

## 1895   **6.6   Recyclist Software**

1896       Contractor shall utilize the “Recyclist” cloud-based software or, with City approval, another substantially  
1897       equivalent cloud-based software, at no additional cost to the City or ratepayers, to integrate outreach  
1898       efforts to businesses within the City, store reports required by Article 6 and Exhibit F of this Agreement,  
1899       and additional data required to be made available to CalRecycle. City shall have on-line access to the  
1900       database for real-time monitoring of data.

1901  
1902

## ARTICLE 7. CONTRACTOR'S CONSIDERATION

1903 In addition to any other consideration set forth herein, as part of its consideration for entering this  
1904 Agreement, and for the exclusive franchise, right and privilege to provide Collection services within City  
1905 as specified herein Contractor shall provide the following:

### 1906 **7.1 Franchise Fee**

1907 Contractor shall pay to City, a Franchise Fee based on the percentages in the below table of Contractor's  
1908 annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement.

Fiscal Year	Franchise Fee Percentage
July 1, 2022 through June 30, 2023	Nine percent (9%)
July 1, 2023 through June 30, 2024	Nine and fifty-hundredths percent (9.5%)
July 1, 2024, and annually thereafter	Ten percent (10%)

1909 The Franchise Fee shall be paid to City monthly on or before the twentieth (20) day of each month.  
1910 Should any such due date fall on a weekend or Holiday in which the City's business offices are closed,  
1911 payment shall be due on the first day thereafter in which the City's business offices are open. The  
1912 amount of each payment shall be equal to the percentages in the table above of Contractor's Gross  
1913 Receipts received in the calendar month preceding the date payment is due.

1914 For those Customers, if any, whose service Rates are collected on the tax rolls or otherwise by the City  
1915 on behalf of Contractor, and in the event any Customer makes a payment due for service to the City,  
1916 City shall forward said sums to Contractor, which shall include such sums in the Gross Receipts for the  
1917 month in which payment is made to Contractor. In order to realize more efficient costs of Processing,  
1918 Contractor authorizes the Franchise Fee due in connection with amounts that are collected from  
1919 Customers by City on behalf of Contractor, if any, to be deducted by City prior to City forwarding said  
1920 funds.

1921 The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the  
1922 expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise  
1923 Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy  
1924 of the amounts paid and setting forth the basis for their calculation in a manner acceptable to City.

### 1925 **7.2 Administrative Cost Reimbursement**

1926 On or before July 1 each year, Contractor shall make a payment to City in the amount more fully set  
1927 forth in this paragraph to reimburse City for its administrative costs incurred related to this Agreement  
1928 (the "Administrative Cost Reimbursement") during the ensuing year. The amount of the annual  
1929 Administrative Cost Reimbursement is based on a review of past time expended by City staff relating to  
1930 this Agreement and the reasonable estimate of actual costs that will be incurred. The initial annual  
1931 Administrative Cost Reimbursement shall be in the amount of one hundred eighty-three thousand eight  
1932 hundred dollars and ninety-eight cents (\$183,800.98). Thereafter, the amount due on or before July 1,  
1933 2023 and each July 1 thereafter shall be the sum of: (1) one hundred eighty-three thousand eight  
1934 hundred dollars and ninety-eight cents (\$183,800.98) adjusted annually by the change in the GTCI for  
1935 the twelve (12) month period ending the preceding January 31; plus (2) City's actual consultant costs

1936 related to requests from Contractor pertaining to this Agreement (i.e., requests for discretionary Rate  
 1937 adjustments, requests for transfers, or requests to consider new programs); plus (3) City's legal fees and  
 1938 out of pocket costs incurred in the administration of this Agreement, including fees and costs associated  
 1939 with analyzing new legislation, considering requests from Contractor (including specifically, without  
 1940 limitation, requests for maximum Rate adjustments), and otherwise analyzing issues that arise in  
 1941 connection with this Agreement. Commencing with the payment due July 1, 2023, invoices for the  
 1942 Administrative Cost Reimbursement will be provided to Contractor by City and shall be due to City  
 1943 within thirty (30) days of the date such invoice is mailed by City, or on July 1, whichever comes later.

1944 **7.3 Section Reserved**

1945 **7.4 Payment Schedule and Late Fees**

1946 In the event Contractor fails to timely make any of the payments provided for in Article 7 or any other  
 1947 provision of this Agreement, Contractor shall pay to City, as additional consideration for entering into  
 1948 this Agreement, a sum of money equal to five percent (5%) of the amount due. This amount is required  
 1949 in order to defray those additional expenses and costs incurred by City by reason of the late payment  
 1950 including, but not limited to, the cost of administering, accounting for, and collecting said late payment  
 1951 and the cost to City of postponing services and projects necessitated by the delay in receiving the  
 1952 revenue. In addition to any other remedy provided by law, any amounts not paid to City by Contractor  
 1953 within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per  
 1954 annum, calculated on a daily basis for each day such sums remain past due.

1955 **7.5 Other Fees**

1956 City shall reserve the right to establish other fees, or negotiate changes to the Franchise Fee, AB 939/SB  
 1957 1383 Regulatory Reimbursement and Administrative Fee beyond the regular annual adjustments  
 1958 described above as it deems necessary, to the extent that such further adjustments are also included in  
 1959 the adjustments to the approved Rates.

1960 **ARTICLE 8.**  
 1961 **CONTRACTOR'S COMPENSATION AND RATE**  
 1962 **SETTING**

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1963 **8.1 General**

1964 Contractor will perform the responsibilities and duties described in this Agreement in consideration of  
 1965 the right to receive compensation for services. Contractor Compensation provided for in this Article 8  
 1966 shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for  
 1967 all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, Recycling,  
 1968 Processing, Transfer, profit, and all other things necessary to perform all the services required by this  
 1969 Agreement in the manner and at the times prescribed.

1970 **8.2 Initial Rates**

1971 A. **General.** The Rates for the Rate Period ending June 30, 2023, shall not exceed those set forth in  
 1972 Exhibit D hereto, unless amended by a written amendment to this Agreement entered into by and  
 1973 between the City and the Contractor. Contractor has reviewed these maximum Rates and agrees



1974 they are reasonably expected to generate sufficient revenues to provide adequate Contractor  
 1975 Compensation. Unless and until the maximum Rates set forth on Exhibit D are adjusted,  
 1976 Contractor will provide the services required by this Agreement, charging no more than the  
 1977 maximum Rates authorized by Exhibit D, except as provided herein in this Article 8.

1978 B. **Discount for Disabled or Low-Income Senior Customers.** Contractor shall develop and adopt a  
 1979 program to provide a discounted Rate for qualified disabled or low-income senior Customers. The  
 1980 program shall, at a minimum, meet the standards and conditions set forth in Exhibit L attached  
 1981 hereto and incorporated herein by reference. If, at any time during the Term of this Agreement,  
 1982 the number of Customers receiving a discounted Rate pursuant to such a program exceeds one  
 1983 percent (1%) of the total number of Residential Customers receiving Collection services from  
 1984 Contractor, Contractor and City shall meet and confer in good faith to determine a fair and  
 1985 reasonable adjustment to the standards and conditions of the program and/or the maximum  
 1986 Rates for such Customers set forth in Exhibit D, in order to ensure that Contractor is fairly  
 1987 compensated for the additional costs incurred in continuing to provide the program.

### 1988 **8.3 Schedule of Future Adjustments**

1989 Beginning with Rate Period two (2) (July 1, 2023 to June 30, 2024) and for all subsequent Rate Periods,  
 1990 Contractor or City may request an annual adjustment (increase or decrease) to the maximum Rates  
 1991 shown in Exhibit D, excepting that Contractor shall be entitled to those automatic adjustments in Rates  
 1992 as provided in Section 8.4.B hereof without notice to the City. For all inflationary adjustments extending  
 1993 beyond those set forth in Section 8.4.B, the Contractor shall submit notice in writing, to be received by  
 1994 City in person or via certified mail, by March 1 of the same year based on the method of adjustment  
 1995 described in Section 8.4. Failure to submit a written request by March 1, shall be conclusive as to  
 1996 Contractor's decision not to proceed with an increase for the subsequent year. If an adjustment results  
 1997 in a Rate decrease, then Contractor shall maintain the current Rates, and rollover the Rate decrease to  
 1998 the next Rate adjustment; the intent is to ensure subsequent Rate increases shall be offset with any  
 1999 decrease not previously implemented.

### 2000 **8.4 Method of Adjustments**

2001 A. **General.** Pursuant to Section 8.3, Contractor may implement an annual adjustment to the Total  
 2002 Rate according to the formula shown in Exhibit E, subject to review and concurrence with  
 2003 Contractor's calculations. Additionally, Contractor may be entitled to a further adjustment to the  
 2004 service component for providing Mulch/Compost that may be requested by City in accordance  
 2005 with the requirements of Exhibit B4, Section 4.A.1.

2006 1. **Indemnification.** To the maximum extent allowed by law, Contractor shall indemnify,  
 2007 defend and hold harmless the City, their officers, employees, agents and volunteers,  
 2008 (collectively, Indemnitees) from and against all claims, damages, injuries, losses, costs,  
 2009 including demands, debts, liens, liabilities, causes of action, suits, legal or administrative  
 2010 proceedings, interest, fines, charges, penalties and expenses (including attorneys' and  
 2011 expert witness fees, expenditures for investigations, and administration) and costs or  
 2012 losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed  
 2013 against Contractor or any of the Indemnitees resulting in any form from the City's review  
 2014 and concurrence with Contractor's Rates for service under this Agreement or in  
 2015 connection with the application of California Constitution Articles XIII C and Article XIII D to

2016 the imposition, payment or collection of Rates and fees for services provided by  
 2017 Contractor under this Agreement. Notwithstanding the foregoing, this indemnity shall not  
 2018 extend to any loss arising directly from the negligence of City, its officers, and its  
 2019 employees. Nothing herein is intended to imply that California Constitution Articles XIIC  
 2020 or XIID apply to the setting of Rates for the services provided under this Agreement;  
 2021 rather, this Section 8.4.A.1 is provided merely to allocate risk of loss between the Parties.

2022 **B. Rate Adjustment Calculation.**

2023 1. **Annual Garbage and Trash Collection Index Adjustments to Service Component of**  
 2024 **Maximum Rates.** Commencing on July 1, 2023, the service component associated with  
 2025 any of the maximum Rates as set forth in Exhibit D may be adjusted by Contractor, and  
 2026 such Rates may be adjusted by Contractor annually thereafter on each subsequent July 1  
 2027 during the Term hereof (the "Adjustment Dates"), by multiplying such service component  
 2028 by a percentage equal to the average annual change in the Garbage and Trash Collection  
 2029 Index (GTCl) (CUUR0000SEHG02) in U.S. city average, all urban consumers, not seasonally  
 2030 adjusted, between the twelve (12) months ended December prior to the Adjustment Date  
 2031 and the twelve (12) months ended the prior December (the "GTCl Adjustment"). The GTCl  
 2032 Adjustment shall not exceed six percent (6%) for the July 1, 2023 adjustment.  
 2033 Notwithstanding the foregoing, the GTCl Adjustment shall not exceed five percent (5%) in  
 2034 any given year starting with the adjustment effective July 1, 2024, and all years thereafter.  
 2035 At least forty-five (45) days prior to each Adjustment Date, Contractor shall provide the  
 2036 City Manager with a revised Exhibit D reflecting the GTCl Adjustment, along with data  
 2037 supporting the basis for its calculations, so that City may review and verify the accuracy of  
 2038 Contractor's calculations. No GTCl Adjustment shall become effective until the City  
 2039 Manager confirms the accuracy of Contractor's calculations and the submitted revised  
 2040 Exhibit D.

2041 2. **Annual Adjustments to Landfill Disposal Component of Maximum Rates.** It is the  
 2042 intention of the Parties that the landfill Disposal component associated with any of the  
 2043 maximum Rates as set forth in Exhibit D shall be adjusted no more often than annually on  
 2044 each Adjustment Date such that they reflect each Customer's pro-rata share of any  
 2045 increase or decrease in the actual landfill Disposal (tipping) fees incurred by Contractor for  
 2046 Disposal of Solid Waste Collected pursuant to this Agreement. To arrive at an appropriate  
 2047 adjustment formula to satisfy this intent, Contractor warrants and represents that the  
 2048 "Landfill Disposal Component Tonnage Basis" set forth in Exhibit D is a fair estimate of the  
 2049 amount of Solid Waste generated and ultimately Disposed of by each applicable Customer  
 2050 and/or service type. In accordance with Article 6 of this Agreement, Contractor shall  
 2051 maintain and make available to the City and/or its auditor or examiner records and data  
 2052 relating to landfill Disposal costs incurred by Contractor and calculation of the Landfill  
 2053 Disposal Component Tonnage Basis applicable to each Customer and/or service type set  
 2054 forth on Exhibit D. If, at any time during the Term of this Agreement, the City Manager  
 2055 determines or agrees that, based on such records and data, the Landfill Disposal  
 2056 Component Tonnage Basis for any Customer and/or service type should be adjusted to  
 2057 more accurately reflect a fair estimate of Solid Waste generated and ultimately Disposed  
 2058 of by such Customer and/or service type, Exhibit D shall be revised accordingly. The initial  
 2059 maximum Rate associated with the landfill Disposal component for various services set  
 2060 forth in Exhibit D has been arrived at by multiplying the Landfill Disposal Component  
 2061 Tonnage Basis for each applicable Customer and/or service type by thirty-eight dollars and

2062 thirty-four cents (\$38.34) which is the per Ton tipping fee charged by the Orange County  
 2063 Landfill System as of July 1, 2022 (whereas of the Effective Date Solid Waste must be  
 2064 delivered for Disposal per the County Agreement). If prior to any Adjustment Date a  
 2065 change occurs in the tipping fees charged to Contractor by the landfill to which it delivers  
 2066 Solid Waste Collected hereunder, the landfill Disposal component associated with any of  
 2067 the maximum Rates set forth in Exhibit D shall be adjusted as of the Adjustment Date by  
 2068 similarly multiplying the Landfill Disposal Component Tonnage Basis for each applicable  
 2069 Customer and/or service type by the per Ton tipping fee then in effect, subject to the City  
 2070 Manager's verification and concurrence with Contractor's calculations. In the event an  
 2071 increase occurs in applicable landfill tipping fees at a time other than an annual  
 2072 Adjustment Date, Contractor may request an adjustment to the maximum Rates  
 2073 applicable to the landfill Disposal component set forth on Exhibit D pursuant to Section  
 2074 8.5 hereof, subject to the City Manager's verification and concurrence with Contractor's  
 2075 calculations.

2076 3. **Zero Percent (0%) or Decrease in Rate Adjustment Calculation.** If the Rate adjustment  
 2077 calculation is calculated to be zero percent (0%) or less, there shall be no changes to  
 2078 charges and Rates during the Rate Period corresponding the Rate adjustment calculation.  
 2079 In the case of a calculated Rate decrease, the amount of such decrease shall be carried  
 2080 forward as an offset to future Rate increases.

2081 4. **Source Separated Commercial Premises Recycling and Organic Materials Compensation**  
 2082 **Adjustment.** Contractor shall provide Source Separated Recycling and Organic Materials  
 2083 services to Commercial Premises at Rates are listed in Exhibit D. The service component  
 2084 associated with the Source Separated Commercial Premises Recycling and Organic  
 2085 Materials services maximum Rates as set forth in Exhibit D may be adjusted by Contractor  
 2086 annually on each subsequent July 1 during the Term hereof (the "Adjustment Dates"), by  
 2087 multiplying such service component by a percentage equal to the change in the GTCI  
 2088 average for the twelve (12) month period ending on the date of January 31 immediately  
 2089 prior to the applicable Adjustment Date (the "GTCI Adjustment).

2090 The GTCI Adjustment shall not exceed six percent (6%) for the July 1, 2023 adjustment.  
 2091 Notwithstanding the foregoing, the GTCI Adjustment shall not exceed five percent (5%)  
 2092 starting with the adjustment effective July 1, 2024 and all years thereafter. At least forty-  
 2093 five (45) days prior to each Adjustment Date, Contractor shall provide the City Manager  
 2094 with data supporting the basis for its calculations, so that City may review and verify the  
 2095 accuracy of Contractor's calculations. No GTCI Adjustment shall become effective until the  
 2096 City Manager confirms the accuracy of Contractor's calculations and the submitted revised  
 2097 Exhibit D.

2098 C. **Pass-Through of Surcharges.** Contractor may request a pass-through adjustment based on  
 2099 changes in a direct per Ton fee assessed at the Disposal Site by Federal, State, or local regulatory  
 2100 agencies after the Effective Date and City's approval shall not be unreasonably withheld.

## 2101 **8.5 Extraordinary Adjustments**

2102 Contractor or City may request an adjustment to maximum Rates at reasonable times other than that  
 2103 allowed under Section 8.3 in the event of extraordinary changes in the cost of providing service under  
 2104 this Agreement, including requests related to Change in Law as defined in Exhibit A. Such changes shall  
 2105 not include changes in Recyclable Materials or Organic Waste Processing costs or, changes in the market

2106 value of Recyclable Materials, inaccurate estimates by the Contractor of its proposed cost of operations,  
 2107 unionization of Contractor's work force, or change in wage rates or employee benefits. Extraordinary  
 2108 Rate adjustments may not be applied retroactively.

2109 For each request for an adjustment to the maximum Rates that Contractor may charge Customers  
 2110 brought pursuant to this Section 8.5 Contractor shall prepare a schedule documenting the extraordinary  
 2111 costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by  
 2112 Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs  
 2113 and total revenues have changed over the past three (3) years for the services provided under this  
 2114 Agreement.

2115 Contractor shall provide to City a report of its annual revenues and expenses for the services provided in  
 2116 the City, and City shall have right to audit this information in connection with the City's review of  
 2117 Contractor's Rate adjustment request. City may consider increases or decreases in the Contractor's total  
 2118 revenues and total cost of services when reviewing an extraordinary Rate adjustment request and City's  
 2119 determination will be final. A Rate adjustment request made in response to a new service requested by  
 2120 City will be determined in accordance with Section 3.6.

## 2121 **8.6 Limitations On Rate Adjustments**

2122 At least forty-five (45) days prior to adjusting any Rate(s) charged to Customers, Contractor shall provide  
 2123 written notice to the City Manager of its intent to adjust such Rate(s) and the amount of such  
 2124 adjustment. Contractor shall be entitled to implement the intended adjustment to such Rate(s) unless  
 2125 the City Manager determines that the adjusted Rates will exceed the then-current maximum Rates as  
 2126 set forth on Exhibit D.

## 2127 **ARTICLE 9.** 2128 **INDEMNITY, INSURANCE, AND PERFORMANCE** 2129 **BOND**

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### 2130 **9.1 Indemnification**

2131 A. **General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless  
 2132 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and  
 2133 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs  
 2134 (including without limitation costs and fees of litigation, including attorneys' and expert witness  
 2135 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's  
 2136 performance, and the performance of any Subcontractor, or agent of Contractor, under this  
 2137 Agreement, or its failure to comply with any of its obligations contained in the Agreement, except  
 2138 to the extent such loss or damage was caused by the negligence or willful misconduct of City. This  
 2139 Section 9.1 shall survive the expiration or termination of this Agreement and shall not be  
 2140 construed as a waiver of City's legal and/or equitable rights as defined herein and permitted under  
 2141 Applicable Law.

2142 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire  
 2143 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or  
 2144 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

2145 If Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its  
 2146 activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory  
 2147 and/or remedial action reasonably required for the remediation of such environmental  
 2148 contamination. Prior to undertaking any investigatory or remedial action, however, Contractor  
 2149 shall first obtain City's approval of any proposed investigatory or remedial action. Should  
 2150 Contractor fail at any time to promptly take such action, City may undertake such action at  
 2151 Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses  
 2152 within thirty (30) calendar days of being billed for those expenses, and any amount not paid within  
 2153 that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the  
 2154 delinquent fee payment provision of Section 7.4. These obligations are in addition to any defense  
 2155 and indemnity obligations that Contractor may have under this Agreement.

2156 Notwithstanding the foregoing, Contractor's duties under this Subsection shall not extend to any  
 2157 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but  
 2158 not limited to, claims arising under Comprehensive Environmental Response, Compensation and  
 2159 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful  
 2160 misconduct.

2161 C. **Environmental Indemnity.** Contractor shall defend with counsel acceptable to City, indemnify,  
 2162 and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and  
 2163 liability for damages of every name, kind and description, including attorneys' fees and costs  
 2164 incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded  
 2165 Waste.

2166 D. **Electronic and Web based Information Indemnity.** Contractor shall defend with counsel  
 2167 acceptable to City, indemnify, and hold City harmless against and from any and all related claims,  
 2168 including but not limited to, suits, losses, penalties, damages, responsibility for costs, regulatory  
 2169 fines, penalties, credit monitoring expenses, and liability for damages of every name, kind and  
 2170 description, including attorneys' fees and costs incurred, attributable to the negligence or willful  
 2171 misconduct of Contractor and any Subcontractors used in performance of this Agreement in  
 2172 handling or protecting Customer information over which Contractor has control, including but not  
 2173 limited to billing details, electronic payment(s), and Customer account information that is not  
 2174 readily available to the general public. Contractor shall maintain electronic files and Contractor's  
 2175 website in accordance with the industry best practices for maintaining such information as safely  
 2176 and securely as possible. Nothing in this Section 9.1.D shall prevent or restrict Contractor's  
 2177 obligation and responsibility to provide City with information required under this Agreement.

2178 E. **Related to AB 939, AB 341, and SB 1383.** Contractor's duty to defend and indemnify herein  
 2179 includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341,  
 2180 AB 1826, and/or SB 1383 are not met by the Contractor with respect to the Contractor's  
 2181 obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet  
 2182 its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that  
 2183 prevents Contractor or City from submitting reports to regulators in a timely manner. This  
 2184 indemnity is subject to the provisions of Public Resources Code § 40059.1.

2185 F. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of  
 2186 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution  
 2187 (Commonly Proposition 218), which impacts the Rates for the Collection services established in

2188 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the  
2189 impact of such Change in Law on either Party's ability to perform under this Agreement.

2190 If, at any time, a Rate adjustment determined to be appropriate by both City and Contractor to  
2191 compensate Contractor for increases in costs as described in this Agreement cannot be  
2192 implemented for any reason, Contractor shall be granted the option to negotiate with City, in  
2193 good faith, a reduction of services equal to the value of the Rate adjustment that cannot be  
2194 implemented. If City and Contractor are unable to reach agreement about such a reduction in  
2195 services, then Contractor may terminate this Agreement upon one (1) year's prior written notice  
2196 to City, in which case the Contractor and City shall each be entitled to payment of amounts due  
2197 for contract performance through the date of termination but otherwise will have no further  
2198 obligation to one another unless this Agreement specifically states otherwise, after the date of  
2199 such termination. Should a court of competent jurisdiction determine that the Contractor cannot  
2200 charge and/or increase its Rates for charges related to Franchise Fees and governmental fees and  
2201 charges, Contractor shall reduce the Rates it charges Customers a corresponding amount,  
2202 providing said fees, reimbursements, Rates and/or charges disallowed by the court are not related  
2203 to the cost of providing service hereunder and had been incorporated in the Rates charged by  
2204 Contractor to its Customers.

2205 Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to the  
2206 Rates established for services provided under this Agreement; rather this Section 9.1.F is provided  
2207 merely to allocate risk of an adverse judicial interpretation between the Parties.

2208 G. **CalPERS Eligibility Indemnification.** Contractor's employees, agents, or Subcontractors providing  
2209 service under this Agreement shall not: (i) qualify for any compensation and benefit under  
2210 CalPERS; (ii) be entitled to any benefits under CalPERS; (iii) enroll in CalPERS as an employee of  
2211 City; (iv) receive any employer contributions paid by City for CalPERS benefits; or (v) be entitled to  
2212 any other CalPERS-related benefit by reason of the services provided under this Agreement that  
2213 would accrue to a City employee. Contractor's employees, agents, or Subcontractors hereby waive  
2214 any claims to benefits or compensation described in this Section 9.1. This Section 9.1 applies to  
2215 Contractor notwithstanding any other agency, State or Federal policy, rule, regulation, law, or  
2216 ordinance to the contrary.

2217 If Contractor's employees, agents, or Subcontractors providing services under this Agreement  
2218 claim, or are determined by a court of competent jurisdiction or the California Public Employees  
2219 Retirement System ("CalPERS") to be eligible for enrollment in CalPERS of the City, Contractor  
2220 shall indemnify, defend, and hold harmless City for the payment of any employer and employee  
2221 contributions for CalPERS benefits on behalf of the employee as well as for payment of any  
2222 penalties and interest on such contributions which would otherwise be the responsibility of the  
2223 City.

2224 Contractor's Compensation under this Agreement shall be the full and complete compensation to  
2225 which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled  
2226 for performance of any work under this Agreement. Neither Contractor nor Contractor's officers,  
2227 employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health,  
2228 leave or other fringe benefits applicable to City employees. The City will not make any Federal or  
2229 State tax withholdings on behalf of Contractor. The City shall not be required to pay any workers'  
2230 compensation insurance on behalf of Contractor.

2231 Contractor agrees to defend and indemnify the City for any obligation, claim, suit, or demand for  
 2232 tax, retirement contribution including any contribution to CalPERS, social security, salary or wages,  
 2233 overtime payment, or workers' compensation payment that the City may be required to make on  
 2234 behalf of: (1) Contractor; (2) any employee of Contractor; or, (3) any employee of Contractor  
 2235 construed to be an employee of the City, for work performed under this Agreement.

## 2236 9.2 Insurance

2237 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all  
 2238 times during the Term of this Agreement not less than the following coverage and limits of  
 2239 insurance:

2240 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times  
 2241 maintain, at its expense, the following coverages and requirements. Failure to maintain the  
 2242 identified insurance requirements during the entire Term of this Agreement shall constitute an  
 2243 event of default subject to Section 11.1.C. The comprehensive general liability insurance shall  
 2244 include broad form property damage insurance.

2245 1. **Minimum Coverages.** Insurance coverage shall be with limits not less than the following:

2246 a. Comprehensive General Liability – \$10,000,000 combined single limit per occurrence  
 2247 for bodily injury, personal injury, and property damage.

2248 b. Automobile Liability – \$10,000,000 combined single limit per accident for bodily  
 2249 injury and property damage (include coverage for Hired and Non-owned vehicles).

2250 c. Workers' Compensation – Statutory Limits/Employers' Liability - \$1,000,000/accident  
 2251 for bodily injury or disease.

2252 d. Employee Blanket Fidelity Bond – \$500,000 per employee loss covering dishonesty,  
 2253 forgery, alteration, theft, disappearance, and destruction (inside or outside).

2254 e. Pollution Liability – \$10,000,000 per loss and annual aggregate applicable to bodily  
 2255 injury; property damage, including loss of use of damaged property or of property  
 2256 that has not been physically damaged or destroyed; clean-up costs, including first  
 2257 party cleanup of the City's property and third party cleanup, and bodily injury costs if  
 2258 pollutants impact other properties; and defense, including costs, fees and expenses  
 2259 incurred in the investigation, defense, or resolution of claims. Coverage shall include  
 2260 completed operations and shall apply to sudden and non-sudden pollution  
 2261 conditions. Coverage shall apply to acts, errors or omissions arising out of, or in  
 2262 connection with, Contractor's scope of work under this Agreement. Coverage shall  
 2263 also apply to non-owned deposit sites ("NODS") that shall protect against, for  
 2264 example, claims regarding bodily injury, property damage, and/or cleanup costs  
 2265 involving NODS. Coverage is preferred by the City to be occurrence based. However,  
 2266 if provided on a claims-made basis, Contractor warrants that any retroactive date  
 2267 applicable to coverage under the policy precedes the Effective Date of this  
 2268 Agreement, and that continuous coverage shall be maintained, or an extended  
 2269 discovery period will be exercised through completion or termination of this  
 2270 Agreement for a minimum of five (5) years. This provision does not limit or alter any  
 2271 rights or remedies to City allowable under this Agreement and/or Applicable Law in  
 2272 perpetuity.

- 2273 f. Technology Professional Liability Errors and Omissions Insurance (Cyber Liability)  
 2274 appropriate to the Contractor's profession and industry practice, with limits not less  
 2275 than \$2,000,000 per occurrence. Coverage for cyber risks shall be sufficiently broad  
 2276 to respond to the duties and obligations as are undertaken by Contractor under this  
 2277 Agreement and shall include, but not be limited to claims involving infringement of  
 2278 intellectual property, including but not limited to infringement of copyright,  
 2279 trademark, trade dress, invasion of privacy violations, information theft, damage to  
 2280 or destruction of electronic information, release of private information, alteration of  
 2281 electronic information, extortion, and network security. The policy shall provide  
 2282 coverage for breach response notification and remediation costs, regulatory fines  
 2283 and penalties, credit monitoring expenses, electronic funds transfer losses, electronic  
 2284 data restoration expenses, and business interruption costs with limits sufficient to  
 2285 respond to these obligations, in the sole discretion of the City's Risk Manager.
- 2286 2. **Additional Insured.** City, its officers, agents, employees, and volunteers shall be named as  
 2287 additional insured on all but the workers' compensation and professional liability  
 2288 coverages.
- 2289 3. Said policies shall remain in force through the life of this Agreement and, with the  
 2290 exception of professional liability coverage, shall be payable on a "per occurrence" basis  
 2291 unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all  
 2292 "claims made" coverage, if the Contractor changes insurance carriers Contractor shall  
 2293 purchase "tail" coverage or otherwise provide for continuous coverage covering the Term  
 2294 of this Agreement and not less than three (3) years thereafter, except for the five (5) year  
 2295 tail of Pollution Liability Coverage as described above. Proof of such "tail" or other  
 2296 continuous coverage shall be required at any time that the Contractor changes to a new  
 2297 carrier prior to receipt of any payments due.
- 2298 4. The Contractor shall declare all aggregate limits on the coverage before commencing  
 2299 performance of this Agreement, and City's Risk Manager reserves the right to require  
 2300 higher aggregate limits to ensure that the coverage limits required for this Agreement as  
 2301 set forth above are available throughout the performance of this Agreement.
- 2302 5. The deductibles or self-insured retentions are for the account of Contractor and shall be  
 2303 the sole responsibility of the Contractor.
- 2304 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be  
 2305 suspended, voided, canceled by either Party, reduced in coverage or in limits except after  
 2306 thirty (30) calendar days prior written notice by certified mail, return receipt requested,  
 2307 has been given to the City Manager ten (10) Business Days for delinquent insurance  
 2308 premium payments).
- 2309 7. Insurance must be placed with insurers with a current A.M. Best's rating of no less than A-  
 2310 VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers,  
 2311 ("LASLI") with a Best's Key Rating Guide of at least A: X.
- 2312 8. The policies shall cover all activities of Contractor, its officers, employees, agents and  
 2313 volunteers arising out of or in connection with this Agreement.
- 2314 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be  
 2315 primary, including as respects City, its officers, agents, employees, and volunteers. Any



- 2316 insurance maintained by City shall apply in excess of, and not contribute with, insurance  
2317 provided by Contractor's liability insurance policy.
- 2318 10. The Contractor shall waive all rights of subrogation against City, its officers, employees,  
2319 agents, and volunteers.
- 2320 C. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish  
2321 City Manager with certificates or original endorsements reflecting coverage required by this  
2322 Agreement. The certificates or endorsements are to be signed by a Person authorized by that  
2323 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and  
2324 are subject to the approval of, City Risk Manager before work commences.
- 2325 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish City Manager with  
2326 certificates or original endorsements reflecting renewals, changes in insurance companies, and  
2327 any other documents reflecting the maintenance of the required coverage throughout the entire  
2328 Term of this Agreement. The certificates or endorsements are to be signed by a Person authorized  
2329 by that insurer to bind coverage on its behalf.
- 2330 E. **No Cap on Indemnity.** The minimum amounts of coverage described in this Section 9.2 will not  
2331 constitute any limitations or cap on Contractor's indemnification obligations under this  
2332 Agreement.
- 2333 F. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by  
2334 State law and shall comply with Section 3700 of the State Labor Code.

### 2335 9.3 Faithful Performance Bond or Irrevocable Letter of Credit

- 2336 A. Contemporaneously with execution of this Agreement, as security for Contractor's faithful  
2337 performance of all obligations of this Agreement, Contractor shall provide a surety mechanism  
2338 (the "Surety") as more fully defined below in the amount of Two Million Five Hundred Thousand  
2339 Dollars (\$2,500,000.00). The Surety may be comprised of either a performance bond or an  
2340 irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some  
2341 or all of the Surety requirement it shall be drawn upon a financial institution with an office within  
2342 fifty (50) miles of City, and otherwise in a form acceptable to the City Attorney. The performance  
2343 bond, if any, shall be issued by a duly authorized corporate surety company authorized to do  
2344 business in California, and in a form acceptable to the City Attorney and in full compliance with  
2345 the provisions of California Code of Civil Procedure Sections 995.610 – 995.660 re Admitted Surety  
2346 Insurers. The cost of the Surety shall be the sole obligation of Contractor. The Surety shall be  
2347 released within thirty (30) days after both: (i) the expiration of the Term of this Agreement; and,  
2348 (ii) Contractor's satisfactory performance of all obligations hereunder.
- 2349 B. In the event Contractor shall for any reason become unable to, or fail in any way to, perform as  
2350 required by this Agreement, City and/or District may declare a portion or all of the Surety, as may  
2351 be necessary to recompense and make whole the City and/or District, forfeited to the City and/or  
2352 District. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its  
2353 original amount within thirty (30) days of the City's and/or District's notice to do so. Failure to  
2354 restore the Surety to its full amount within thirty (30) days shall be a material breach of this  
2355 Agreement.

- 2356 C. District providing Contractor with written notice of its failure to pay City and/or District any  
 2357 amount owing under this Agreement, either the letter of credit or performance bond comprising  
 2358 the Surety may be utilized by City and/or District for purposes including, but not limited to:
- 2359 1. Payment of sums due under the terms of this Agreement which Contractor has failed to  
 2360 timely pay to City and/or District, including specifically, but not limited to, Liquidated  
 2361 Damages.
- 2362 2. Reimbursement of costs borne by City and/or District to correct violations of this  
 2363 Agreement not corrected by Contractor.
- 2364 D. City and/or District may draw upon the entire letter of credit (if any) utilized to meet Contractor's  
 2365 obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause  
 2366 the letter of credit to be extended or replaced with another satisfactory letter of credit no later  
 2367 than sixty (60) days prior to its expiration.

#### 2368 **9.4 Forfeiture of Performance Bond or Irrevocable Letter of Credit**

2369 In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required  
 2370 by this Agreement, City may declare a portion or all of the performance bond or irrevocable letter of  
 2371 credit which is necessary to recompense and make whole the City, forfeited to the City. Upon partial or  
 2372 full forfeiture of the performance bond or irrevocable letter of credit, Contractor shall restore the  
 2373 performance bond or irrevocable letter of credit to its face amount within thirty (30) days of the City's  
 2374 declaration. Failure to restore the performance bond or irrevocable letter of credit to its full amount  
 2375 within thirty (30) days shall be a material breach of the Agreement.

#### 2376 **9.5 Performance Security Beyond Service Term**

2377 Some Agreement requirements extend beyond the Term of this Agreement and will not be  
 2378 substantiated until after the final service date. Therefore, the Contractor shall not terminate the  
 2379 performance bond or letter of credit and will renew them to ensure continuous availability to the City,  
 2380 until receiving a written release from the City. City will provide such a release when City, in its  
 2381 reasonable judgment, is fully satisfied that all requirements have been met. However, permission from  
 2382 the City to discontinue holding these performance securities does not relieve Contractor of payments to  
 2383 the City that may be due or may become due.

### 2384 **ARTICLE 10.**

### 2385 **CITY'S RIGHT TO PERFORM SERVICE**

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#### 2386 **10.1 General**

2387 In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle,  
 2388 Process, Transport or Dispose of any or all Discarded Materials which it is required by this Agreement, at  
 2389 the time and in the manner provided in this Agreement, for a period of more than two (2) Business  
 2390 Days, excluding Saturday, Sunday, and Holidays defined in Exhibit A, and if, as a result thereof, Discarded  
 2391 Materials should accumulate in City to such an extent, in such a manner, or for such a time that such  
 2392 accumulation endangers or menaces the public health, safety or welfare, then City shall have the right,  
 2393 but not the obligation, upon twenty-four (24) hours prior written notice to Contractor during the period  
 2394 of such emergency as determined by City: (1) to perform, or cause to be performed, such services itself

2395 with its own or other personnel without liability to Contractor; and/or, (2) to take possession of any or  
2396 all of Contractor's land, equipment, and other property used or useful in the Collection and  
2397 Transportation of Discarded Materials, and to use such property to Collect and Transport any Discarded  
2398 Materials generated within City which Contractor would otherwise be obligated to Collect, Transport,  
2399 and properly Dispose of or Process pursuant to this Agreement.

2400 Notice of Contractor's failure, refusal, or neglect to Collect, Transport and properly Dispose of or Process  
2401 Discarded Materials may be given orally by telephone to Contractor at its principal office and shall be  
2402 effective immediately. Written confirmation of such oral notification shall be sent to Contractor within  
2403 one (1) Business Day, excluding Saturday, Sunday and Holidays defined in Exhibit A of the oral  
2404 notification.

2405 Contractor further agrees that in such event:

2406 A. It will take direction from City to affect the transfer of possession of equipment and property to  
2407 City for City's use, or for use by any Person or entity designated by the City.

2408 B. It will, if City so requests, keep in good repair and condition all of such equipment and property,  
2409 provide all motor vehicles with fuel, oil and other service, and provide such other service as may  
2410 be necessary to maintain said property in operational condition.

2411 C. City may immediately engage all or any personnel, including 3rd parties not directly employed by  
2412 the City, necessary or useful for the Collection and Transportation of Discarded Materials,  
2413 including, if City so desires, employees previously or then employed by Contractor. Contractor  
2414 further agrees, if City so requests, to furnish City the services of any or all management or office  
2415 personnel employed by Contractor whose services are necessary or useful for Discarded Materials  
2416 Collection, Transportation, Processing, and Disposal operations and for the Billing and collection of  
2417 fees for these services.

2418 City agrees that it assumes complete responsibility for the proper and normal use of such equipment  
2419 and Facilities while in its possession.

2420 If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.7, City  
2421 shall pay to Contractor the reasonable rental value of the equipment and Facilities, possession of which  
2422 is taken by City, for the period of City's possession, if any, which extends beyond the period of time for  
2423 which Contractor has rendered bills in advance of service, for the class of service involved.

## 2424 **10.2 Temporary Possession of Contractor's Property**

2425 If City suffers an interruption or discontinuance of service (including interruptions and discontinuance  
2426 due to events described in Section 11.7), City may take possession of and use all of Contractor's property  
2427 described above until other suitable arrangements can be made for the provision of Discarded Materials  
2428 Services which may include the grant of a Franchise to another waste hauling company.

## 2429 **10.3 Billing and Compensation to City During City's Possession**

2430 During such time that City is providing Discarded Materials services, as above provided, Contractor shall  
2431 bill and Collect payment from all users of the above-mentioned services as described in Section 4.6.  
2432 Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses

2433 incurred by City beyond that billed and received by City in taking over possession of the above-  
2434 mentioned equipment and property for Discarded Materials service in such manner and to an extent as  
2435 would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement  
2436 shall be made from time to time after submission by City to Contractor of each statement listing such  
2437 costs and expenses, but in no event later than five (5) Business Days from and after each such  
2438 submission.

#### 2439 **10.4 City's Right to Relinquish Possession**

2440 It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all  
2441 of the above-mentioned property to Contractor and thereupon demand that Contractor resume the  
2442 Discarded Materials services as provided in this Agreement, whereupon Contractor shall be bound to  
2443 resume the same.

#### 2444 **10.5 City's Possession Not A Taking**

2445 Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this  
2446 Article 10: (1) does not constitute a taking of private property for which compensation must be paid;  
2447 (2) will not create any liability on the part of City to Contractor; and, (3) does not exempt Contractor  
2448 from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to  
2449 circumstances arising under this Section 10.5 provided that the Contractor is not required to indemnify  
2450 the City against claims and damages arising from the sole negligence of the City, its elected and  
2451 appointed officials, boards, commissions, officers, employees and agents in the operation of Collection  
2452 vehicles during the time the City has taken possession of such vehicles.

#### 2453 **10.6 Duration of City's Possession**

2454 City's right pursuant to this Article 10 to retain temporary possession of Contractor's Facilities and  
2455 equipment, and to render Collection services, shall terminate when City determines that such services  
2456 can be resumed by Contractor, or when City no longer reasonably requires such property or equipment.  
2457 In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or  
2458 continue its use for any period of time and may at any time, in its sole discretion, relinquish possession  
2459 to Contractor.

#### 2460 **10.7 Disaster Preparedness Plan**

2461 Within twelve (12) months of the Effective Date, Contractor shall, with City assistance, prepare a written  
2462 plan detailing how Discarded Materials services will be delivered in a time of emergency or natural  
2463 disaster. For the plan, City shall provide Contractor with a written list of critical Facilities being those  
2464 Facilities that the City deems in need of special consideration in a time of emergency because they are  
2465 critical to City's emergency response, of priority to the need of the community and/or represent a public  
2466 health risk to the community. Contractor's written plan shall contain a protocol for contacting  
2467 Contractor management in the event of an emergency, an overview of Contractor's resources available  
2468 for emergency response, a plan for Collection, Disposal, and Recycling of Discarded Materials generated  
2469 by critical Facilities until the time of emergency passes and a plan for resuming normal operations  
2470 following an emergency.

2471 In the event of a disaster, the City may grant Contractor a waiver of some or all Collection requirements  
2472 under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the

2473 duration of the waiver. Any resulting changes in Collection requirements shall be addressed as a change  
2474 in scope in accordance with Section 3.6.

2475

2476

## ARTICLE 11. DEFAULT AND REMEDIES

### 2477 11.1 Events of Default

2478 All provisions of the Agreement are considered material. Each of the following shall constitute an event  
2479 of default.

2480 A. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.

2481 B. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or  
2482 upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

2483 C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force the workers'  
2484 compensation, insurance coverage required by Section 9.2, or indemnification coverage as  
2485 required by this Agreement.

2486 D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having  
2487 authority over Contractor relative to this Agreement, which violation the City reasonably  
2488 determines is material. If Contractor contests any such orders or filings by appropriate  
2489 proceedings conducted in good faith, and the regulatory body determines no violation occurred,  
2490 no breach or default of this Agreement shall be deemed to have occurred.

2491 E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, which  
2492 violation the City reasonably determines is material.

2493 F. **Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or  
2494 Processing services as required under this Agreement for a period of two (2) consecutive calendar  
2495 days or more, for any reason within the control of Contractor.

2496 G. **Failure to Pay or Report.** Contractor fails to make any payments to City required under this  
2497 Agreement including payment of City Fees or Liquidated Damages and/or refuses to provide City  
2498 with required information, reports, and/or records in a timely manner as provided for in the  
2499 Agreement.

2500 H. **Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,  
2501 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied  
2502 within the time set in the written notice of the violation. Additionally, an event of default occurs if  
2503 Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of  
2504 violation, or if Contractor fails to commence to correct or remedy such violation within the time  
2505 set forth in such notice and diligently effect such correction or remedy thereafter.

2506 I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by  
2507 Contractor in connection with or as an inducement to entering into this Agreement, or any future  
2508 amendment to this Agreement, which proves to be false or misleading in any material respect as  
2509 of the time such representation or disclosure is made, whether or not any such representation or

- 2510 disclosure appears as part of this Agreement. Additionally, a default occurs if any Contractor-  
 2511 provided report contains a misstatement, misrepresentation, data manipulation, or an omission of  
 2512 fact or content explicitly defined by the Agreement, excepting non-numerical typographical and  
 2513 grammatical errors.
- 2514 J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's  
 2515 operating equipment, including without limits its equipment, maintenance or office facilities,  
 2516 Approved Facility(ies), or any part thereof.
- 2517 K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction  
 2518 of business by Contractor related to this Agreement, including without limit, due to labor unrest  
 2519 including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action  
 2520 lasting more than seven (7) calendar days for Residential Customers and three (3) calendar days  
 2521 for Commercial Customers.
- 2522 L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal  
 2523 activity related directly or indirectly to performance of this Agreement or any other agreement  
 2524 held with the City.
- 2525 M. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the  
 2526 expressed written approval of the City unless the assignment is permitted without City approval  
 2527 pursuant to Section 13.6.
- 2528 N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a  
 2529 proposal for new services or changes to services or fails to implement a change in service as  
 2530 requested by the City as specified in Section 3.5.
- 2531 O. **Failure to Implement Collection Program.** Contractor fails to implement a Collection program that  
 2532 complies with the requirements of Article 4 and Exhibit B, which is essential for the City to achieve  
 2533 compliance with SB 1383.
- 2534 P. **Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity  
 2535 in accordance with Articles 4 and 5, which is essential for the City to achieve compliance with SB  
 2536 1383.
- 2537 Q. **Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards  
 2538 specified in Articles 4 and 5 including achievement of minimum Organic Waste recovery rates,  
 2539 which are essential for the City to achieve SB 1383 compliance.
- 2540 R. **Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other  
 2541 requirements of the Agreement including, but not limited to, public education, reporting,  
 2542 contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement  
 2543 that delegate the City's responsibility and/or authority under SB 1383 to the Contractor.
- 2544 S. **Failure to Dispose of Solid Waste at the Designed Disposal Facility.** Contractor fails to Dispose of  
 2545 all Solid Waste Collected within the City unless the Designated Disposal Facility is no longer  
 2546 required or in the event that the Designated Disposal Facility is not available.

2547 T. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under  
2548 this Agreement, which the City reasonably determines is material.

2549 City shall provide Contractor written notice of default within seven (7) calendar days of the City's first  
2550 knowledge of the Contractor's default.

## 2551 **11.2 Contractor's Right to Cure; Right to Terminate Upon Event of Default**

2552 Contractor shall be given two (2) Business Days from written notification by the City Manager or as  
2553 otherwise agreed to in writing by the Parties to cure any default which, in the City Manager's sole  
2554 opinion, creates a potential public health and safety threat.

2555 Contractor shall be given two (2) Business Days from written notification by the City Manager or as  
2556 otherwise agreed to in writing by the Parties to cure any default arising under Subsections C, D, E, F, G,  
2557 H, J, K, N, O, P, Q, R, S, and T in Section 11.1. However, the City shall not be obligated to provide  
2558 Contractor with a notice and cure opportunity if the Contractor has committed the same breach/default  
2559 within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to  
2560 receive notice of default, or to cure such default, with respect to those matters listed in Subsections A,  
2561 B, I, L, and M above.

2562 Contractor shall be given thirty (30) calendar days from written notification by the City Manager to cure  
2563 any other default (which is not required to be cured within two (2) Business Days). Furthermore, if  
2564 Contractor cannot reasonably cure a default within the applicable period described in this Section 11.2,  
2565 except for defaults that create a potential health and safety threat, and Contractor promptly  
2566 commences the cure or remedy within the initial cure period and thereafter diligently pursues the cure  
2567 or remedy to completion, Contractor shall not be in default of this Agreement. However, the City shall  
2568 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has  
2569 committed the same or similar breach/default within a twenty-four (24) month period.

## 2570 **11.3 City's Remedies in the Event of Default**

2571 Upon Contractor's default, City has the following remedies in the event of Contractor default:

2572 A. **Waiver of Default.** City may waive any event of default or may waive Contractor's requirement to  
2573 cure a default event if City determines that such waiver would be in the best interest of the City.  
2574 City's waiver of an event of default is not a waiver of future events of default that may have the  
2575 same or similar conditions.

2576 B. **Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its  
2577 obligations if Contractor fails to cure default in the time frame specified in Section 11.2 until such  
2578 time the Contractor can provide assurance of performance in accordance with Section 11.8.

2579 C. **Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet specific  
2580 performance standards pursuant to Section 11.6.

2581 D. **Termination.** The City Manager may, in their sole discretion, set a public hearing for the City  
2582 Council to determine whether to terminate this Agreement. Subject to Contractor's right to cure  
2583 as described in Section 11.2, such termination hearing must be set if a default remains uncured  
2584 thirty (30) calendar days after receipt of written notice of default from the City. Such termination

2585 hearing must also be set if a Contractor's default is not cured within two (2) calendar days and the  
2586 default:

- 2587 ○ Creates an imminent public health and safety threat; or
- 2588 ○ Arises under Section 11.1. C, D, E, F, G, J, K, N, O, P, Q, R, S, and T.

2589 If the City terminates this Agreement based on the adopted findings of the termination hearing,  
2590 the City Manager shall first provide written notice to the Contractor twenty (20) calendar days  
2591 before the date of termination. The Contractor shall thereafter be relieved on a going-forward  
2592 basis of all liabilities and obligations required by this Agreement, except for Section 9.1 and any  
2593 other provisions specifically identified to survive termination of this Agreement. Upon expiration  
2594 of the twenty (20) day notice, the City may, in its sole discretion:

- 2595 ○ Directly undertake performance of the services; or
- 2596 ○ Arrange with other Persons to perform the services with or without a written agreement; or
- 2597 ○ Permit Contractor to continue operating under this Agreement including Contractor's  
2598 Compensation until such time that City is able to find substitute services.

2599 This right of termination is in addition to any other rights upon a failure of Contractor to perform  
2600 its obligations under this Agreement.

2601 Contractor shall not be entitled to any further revenues from Collection operations authorized  
2602 hereunder from and after the date of termination.

2603 E. **Other Available Remedies.** City's election of one (1) or more remedies described herein shall not  
2604 limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

#### 2605 **11.4 Possession of Records Upon Termination**

2606 In the event of termination for an event of default, the Contractor shall furnish City Manager with  
2607 immediate access to its business records in a format compatible with the City's computer systems,  
2608 including without limitation, Customer information that is not restricted by Applicable Law, Collection  
2609 routes, compliance records, and billing of accounts for Collection services.

#### 2610 **11.5 City's Remedies Cumulative; Specific Performance**

2611 City's rights to terminate the Agreement under Section 11.2 and to take possession of the Contractor's  
2612 records under Section 11.4 are not exclusive, and City's termination of the Agreement and/or the  
2613 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall  
2614 be in addition to any and all other legal and equitable rights and remedies which City may have.

2615 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service;  
2616 the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the  
2617 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to  
2618 injunctive relief (including but not limited to specific performance).



2619 **11.6 Performance Standards and Liquidated Damages**

2620 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if  
 2621 not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a  
 2622 result of a breach by Contractor of its obligations under this Agreement. The factors relating to the  
 2623 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)  
 2624 substantial damage results to members of the public who are denied services or denied quality or  
 2625 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of  
 2626 the benefits of the Agreement to individual members of the general public for whose benefit this  
 2627 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of  
 2628 measurement in precise monetary terms; (iii) that exclusive services might be available at  
 2629 substantially lower costs than alternative services and the monetary loss resulting from denial of  
 2630 services or denial of quality or reliable services is impossible to calculate in precise monetary  
 2631 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at  
 2632 best, a means of future correction and not remedies which make the public whole for past  
 2633 breaches.

2634 B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties  
 2635 further acknowledge that consistent, reliable Collection services are of utmost importance to City  
 2636 and that City has considered and relied on Contractor's representations regarding its quality-of-  
 2637 service commitment in awarding the Agreement to it. The Parties recognize that some quantified  
 2638 standards of performance are necessary and appropriate to ensure consistent and reliable service  
 2639 and performance. The Parties further recognize that if Contractor fails to achieve the performance  
 2640 standards or fails to submit required documents in a timely manner, City and its residents and  
 2641 businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to  
 2642 ascertain and determine the exact amount of damages that City will suffer. Therefore, without  
 2643 prejudice to City's right to treat such non-performance as an event of default under this Section  
 2644 11.6, the Parties agree that the Liquidated Damages amounts established in this Section 11.6 of  
 2645 this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of  
 2646 the amount of such damages considering all of the circumstances existing on the Effective Date of  
 2647 this Agreement, including the relationship of the sums to the range of harm to City that  
 2648 reasonably could be anticipated and the anticipation that proof of actual damages would be costly  
 2649 or impractical.

2650 Contractor City

2651 Initial Here Initial Here

2652 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth  
 2653 below:

2654 1. **Collection Reliability.**

- 2655 a. For each failure to commence service to a new Customer account within seven (7)  
 2656 days after order: \$100.00 per occurrence
- 2657 b. For each failure to Collect Discarded Materials, which has been properly set out for  
 2658 Collection: \$100.00 per occurrence

- 2659 c. For each failure to correct and Collect a missed service within the timeframe set forth  
2660 in Section 4.7.B.2: \$100.00 per occurrence;  
2661 each additional twenty-four (24) hour period: \$50.00 per occurrence.
- 2662 d. For each failure to comply with the provisions in Section 11.7 Contractor's Actions  
2663 During a Work Stoppage: \$1,000 per day
- 2664 e. For each failure to Collect Abandoned Waste within four (4) days of notification by  
2665 the City per Exhibit B4, Item 8A: \$100 per occurrence.
- 2666 2. **Collection Quality.**
- 2667 a. For failure to properly return empty Containers to avoid pedestrian or vehicular  
2668 traffic impediments or to place Containers upright which exceeds ten (10) Containers  
2669 annually:  
2670 \$50.00 per Container
- 2671 b. For each occurrence of excessive noise or discourteous behavior which exceed ten  
2672 (10) occurrences annually:  
2673 \$100.00 per occurrence
- 2674 c. For each occurrence of Collecting Discarded Materials during unauthorized hours  
2675 which exceeds ten (10) such occurrences annually: \$100.00 per occurrence
- 2676 d. For each occurrence of damage to private property which exceeds five (5) such  
2677 occurrences annually: \$100.00 per occurrence
- 2678 e. For each failure to clean up Discarded Materials spilled from Collection Containers  
2679 within ninety (90) minutes that exceeds ten (10) such failures annually:  
2680 \$100.00 per occurrence
- 2681 f. For each failure to clean up vehicle leaks or spills within the timeframe required by  
2682 Section 5.5.E: \$500 per occurrence
- 2683 g. For each failure to follow the cleanup procedures included in Section 5.5.E:  
2684 \$500 per square foot of affected area
- 2685 3. **Customer Responsiveness.**
- 2686 a. For each failure to initially respond to a Customer Complaint within one (1) Business  
2687 Day (excluding Saturday, Sunday, and Holidays as defined in Exhibit A), and for each  
2688 additional day in which the Complaint is not addressed, which exceed five (5)  
2689 annually: \$50.00 per day
- 2690 b. For each failure to process Customer Complaints as required by Article 4, which  
2691 exceed five (5) annually: \$50.00 per occurrence
- 2692 c. For each failure to record a response to a Customer Complaint or request within  
2693 twenty-four (24) hours of resolution: \$100.00 per occurrence  
2694 For each additional twenty-four (24) hour period: \$50.00 per occurrence
- 2695 d. For each failure to respond to a written inquiry from the City's Solid Waste contract  
2696 manager regarding service requests or requests for information within two (2)

- 2697 Business Days (excluding Saturday, Sunday and Holidays defined in Exhibit A), and for  
 2698 each additional day in which the inquiry is not addressed, which exceed five (5)  
 2699 occurrences annually: \$100 per occurrence
- 2700 e. For each failure to remove graffiti from Containers, or to replace with Containers  
 2701 bearing no graffiti, within two (2) Business Days (excluding Saturday, Sunday, and  
 2702 Holidays defined in Exhibit A) of request from City or Customer: \$ 50.00 per day  
 2703 For each additional day problem not resolved: \$25.00 per day
- 2704 f. For each failure to repair or replace a damaged or missing Container within two (2)  
 2705 Business Days (excluding Saturday, Sunday, and Holidays defined in Exhibit A) of  
 2706 request from City or Customer: \$ 50.00 per day
- 2707 g. For each failure to process a claim for damages within thirty (30) days from the date  
 2708 submitted to Contractor: \$100.00 per occurrence
- 2709 h) For each failure to issue a warning notice to a Container or materials not Collected  
 2710 due to improper set out which exceeds ten (10) such occurrences annually:  
 2711 \$100 per day per occurrence
- 2712 4. **Failure to Submit Reports or Allow Access to Records.** For each failure to submit any  
 2713 individual report or provide access to records in compliance with and in the timeframe  
 2714 specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a  
 2715 failure to submit until such time as all information in the report has been provided in a  
 2716 complete and accurate form. In the event City determines a report to be errant or  
 2717 incomplete more than ten (10) Business Days after submittal by Contractor, Contractor  
 2718 shall be given ten (10) Business Days to complete and correct and any pending Liquidated  
 2719 Damages shall be tolled during that period.
- 2720 a. Monthly Reports: \$50 per day  
 2721 b. Quarterly Reports: \$50 per day  
 2722 c. Annual Reports: \$100 per day
- 2723 5. **Accuracy of Billing.**
- 2724 a. Each Customer invoice that is not prepared in accordance with the City's approved  
 2725 Rate schedule, in excess of ten (10) annually:  
 2726 \$25 per invoice not to exceed \$2,500 per Billing run
- 2727 b. For each instance or invoice in which Contractor imposes a special service fee not in  
 2728 accordance with the approved Rate schedule and not approved in advance in writing  
 2729 by City, or not requested by the service recipient which exceeds ten (10) such  
 2730 occurrences annually: \$50 per occurrence
- 2731 c. Failure to provide a Customer with a response, including an explanation and/or  
 2732 correction, to a Billing Complaint within seven (7) Business Days from the Complaint:  
 2733 \$100.00 per occurrence  
 2734 Each additional day response not provided: \$50.00

- 2735 6. **Public Education and Outreach.**
- 2736 a. Failure to perform public education and outreach activities:
- 2737 1st violation - \$50 per occurrence
- 2738 2nd violation - \$100 per occurrence
- 2739 3rd and subsequent violations - \$250 per occurrence
- 2740 7. **Cooperation with Service Provider Transition.**
- 2741 a. For each day routing information requested by City in accordance with Section 13.10
- 2742 is received after City-established due dates, both for preparation of a request for
- 2743 proposals and for new service provider's implementation of service: \$1,000 per day
- 2744 b. For each day delivery of keys, access codes, remote controls, or other means of
- 2745 access to Discarded Materials Containers is delayed beyond one (1) day prior to new
- 2746 service provider servicing Customers with access issues, as described in Section
- 2747 13.10: \$1,000 per day
- 2748 c. For delay in not meeting the requirements contained in Section 13.10 in a timely
- 2749 manner, in addition to the daily Liquidated Damages for breach under 7(a) and 7(b)
- 2750 above, Liquidated Damages of: \$20,000 per occurrence
- 2751 8. **Diversions Efforts.**
- 2752 a. For each Rate Period (January 1, 2023 to December 31, 2024, considered the first
- 2753 Rate Period) in which Contractor fails to provide support to the City within thirty (30)
- 2754 days of year-end, documenting that it Diverted at least twenty percent (20%) of the
- 2755 Discarded Materials Contractor Collected under this Agreement per Section 5.10:
- 2756 \$25 for each Ton below Tonnage level necessary to meet twenty percent (20%)
- 2757 Diversion goal
- 2758 9. **SB 1383 Requirements.** Failure to meet SB 1383 requirements set forth below:
- 2759 a. Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded
- 2760 Materials to a Facility other than an Approved Facility(ies) for each Discarded
- 2761 Material type under this Agreement.
- 2762 1st violation - \$50 per Ton per offence
- 2763 2nd violation - \$100 per Ton per offence
- 2764 3rd and subsequent violations - \$250 per Ton per offence
- 2765 b. Failure to Implement three- /three-plus Container System. For each occurrence of
- 2766 failing to provide Customers with the three- /three-plus Container system required
- 2767 by and compliant with SB 1383 excluding Generators and Customers granted waivers
- 2768 pursuant to this Agreement and excluding Generators and Customers that
- 2769 demonstrate compliance with Recycling and Organic Waste Self-Hauling
- 2770 requirements pursuant to Section 5.10.080 of District's Code of Regulations and 14
- 2771 CCR Division 7, Article 12, Article 7. Minor, moderate and major violations have the
- 2772 same meaning as defined in 14 CCR Section 18997.3
- 2773 Damages are per Generator or Customer per occurrence:

2774	\$500 – Minor violation
2775	\$4,000 – Moderate violation
2776	\$7,500 – Major violation
2777	c. Failure of Approved Facility(ies) to Meet Limits on Incompatible Materials (if Applicable). For each Ton of Mixed Waste, Source Separated Recyclable Materials Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, or Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste recovered after Processing exceeds Incompatible Material thresholds included in SB 1383 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.
2778	
2779	
2780	
2781	
2782	
2783	
2784	
2785	1st violation - \$50 per Ton per offence
2786	2nd violation - \$100 per Ton per offence
2787	3rd and subsequent violations - \$250 per Ton per offence
2788	d. Failure of Approved Facility(ies) to Meet Limits on Organic Waste in Materials Sent to Disposal. For each Ton of Mixed Waste, Source Separate Recyclable Materials, Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, or Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste in the materials sent to Disposal exceeds the thresholds included in SB 1383 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.
2789	
2790	
2791	
2792	
2793	
2794	
2795	
2796	1st violation - \$50 per Ton per offence
2797	2nd violation - \$100 per Ton per offence
2798	3rd and subsequent violations - \$250 per Ton per offence
2799	e. Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with Section 4.10 of this Agreement:
2800	
2801	
2802	
2803	1st violation - \$50 per route per occurrence
2804	2nd violation - \$100 per route per occurrence
2805	3rd and subsequent violations - \$250 per route per occurrence
2806	f. Failure to Comply with Container Labeling and Colors. For each occurrence of Contractor’s failure to comply with Container labeling and color requirements pursuant to SB 1383.
2807	
2808	
2809	
2810	
2808	1st violation - \$50 per Container occurrence
2809	2nd violation - \$100 per Container occurrence
2810	3rd and subsequent violations - \$250 per Container occurrence

- 2811 g. Failure to Conduct Compliance Tasks. For each failure to conduct any compliance  
 2812 review, Discarded Materials evaluations pursuant to SB 1383, and/or other  
 2813 inspection required by this Agreement.
- 2814 1st violation - \$50 per occurrence
- 2815 2nd violation - \$100 per occurrence
- 2816 3rd and subsequent violations - \$250 per occurrence
- 2817 h. Failure to Issue Contamination Processing Fee Notices. For each failure of Contractor  
 2818 Collection personnel to issue contamination notices and Contamination Processing  
 2819 Fee Notices and maintain documentation of issuance as required by Section 4.10 of  
 2820 this Agreement.
- 2821 1st violation - \$50 per route per day
- 2822 2nd violation - \$100 per route per day
- 2823 3rd and subsequent violations - \$250 per route per day
- 2824 i. Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up  
 2825 inspection as required by Section 4.7.C of this Agreement.
- 2826 1st violation - \$50 per occurrence
- 2827 2nd violation - \$100 per occurrence
- 2828 3rd and subsequent violations - \$250 per occurrence
- 2829 j. Failure to Maintain and/or Provide Access to Information Systems
- 2830 \$500 per day
- 2831 10. **General Contract Adherence.**
- 2832 a. For each day that Contractor fails to provide services required under the Agreement,  
 2833 or comply with terms of the Agreement, five (5) Business Days after receipt of  
 2834 written notification from City that such services are not being provided or terms are  
 2835 not being met: \$100.00/day
- 2836 b. Before assessing Liquidated Damages, City Manager shall give Contractor notice of  
 2837 City's intention to do so. The notice will include a brief description of the incident(s)  
 2838 and non-performance. City Manager may review (and make copies at City's own  
 2839 expense) all information in the possession of Contractor relating to incident(s) and/or  
 2840 non-performance. City Manager may, within ten (10) Business Days after issuing the  
 2841 notice, request a meeting with Contractor. City Manager may present evidence of  
 2842 non-performance in writing and through testimony of City's employees and others  
 2843 relevant to the incident(s) and non-performance. City Manager will provide  
 2844 Contractor with a written explanation of their determination on each incident(s) and  
 2845 non-performance prior to authorizing the assessment of Liquidated Damages under  
 2846 this Section 11.6. The decision of City Manager may be appealed by Contractor to the  
 2847 Deputy City Manager.
- 2848 C. **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that  
 2849 Contractor is determined to be liable in accordance with this Agreement.

2850 D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten (10)  
2851 days after they are assessed. If they are not paid within the ten (10) day period, City may proceed  
2852 against the performance bond required by the Agreement or find Contractor in default and  
2853 terminate this Agreement pursuant to Section 11.1, or both.

## 2854 **11.7 Excuse from Performance**

2855 A. **Force Majeure.** A Party shall be excused from performing their obligations hereunder and from  
2856 any obligation to pay Liquidated Damages and Contractor shall not be in default under this  
2857 Agreement if Contractor is prevented from performing the Collection, Transportation and/or  
2858 Disposal services for any of the following reasons: riots; wars; sabotage; civil disturbances,  
2859 pandemics, epidemics; government restrictions and orders; insurrections; explosion; natural  
2860 disasters such as floods, earthquakes, landslides and fires; strikes; lockouts and other labor  
2861 disturbances; and other similar catastrophic events which are beyond the control of and not the  
2862 fault of the Party claiming excuse from performance hereunder. The Party claiming excuse from  
2863 performance shall, within two (2) calendar days after such Party has notice of such cause, give the  
2864 other Party notice of the facts constituting such cause and asserting its claim to excuse under this  
2865 Section 11.7. If either Party validly exercises its rights under this Section 11.7, the Parties hereby  
2866 waive any claim against each other for any damages sustained thereby.

2867 The partial or complete interruption or discontinuance of Contractor's services caused by one (1)  
2868 or more of the events described in this Section 11.7 shall not constitute a default by Contractor  
2869 under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from  
2870 performing its obligations hereunder for any of the causes listed in this Section 11.7 for a period of  
2871 thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to  
2872 terminate this Agreement by giving ten (10) Business Days' notice to Contractor, in which case the  
2873 provisions of Section 11.4 shall apply.

2874 In the event of a labor disturbance that interrupts Collection, Transportation and/or Disposal of  
2875 Discarded Materials by Contractor as required under this Agreement, the provisions of Section  
2876 11.7.B below shall apply.

### 2877 B. **Labor Disputes.**

2878 1. **Labor Unrest Directed at Third Party.** In the case of labor unrest or job action directed at  
2879 a third party over whom Contractor has no control, the inability of Contractor to provide  
2880 services in accordance with this Agreement due to the unwillingness or failure of the third  
2881 party to: (i) provide reasonable assurance of the safety of Contractor's employees while  
2882 providing such services; or, (ii) make reasonable accommodations with respect to  
2883 Container placement and point of delivery, time of Collection, or other operating  
2884 circumstances to minimize any confrontation with pickets or the number of Persons  
2885 necessary to make Collections shall, to that limited extent, excuse performance. The  
2886 foregoing excuse shall be conditioned on Contractor's cooperation in performing  
2887 Collection services at different times and in different locations.

2888 2. **Contractor Labor Disruptions.** Contractor must notify the City in writing within twenty-  
2889 four (24) hours of a notice from a labor union of a possible work stoppage. Contractor  
2890 agrees that in the event Service is disrupted due to a labor dispute, Contractor shall place  
2891 a minimum of twelve (12), forty (40) yard Roll-Off Boxes or other Containers of equivalent

2892 capacity at locations designated by the City Manager or their designees to serve as  
 2893 Collection points for the Customers within two (2) days of said Service interruption.  
 2894 Containers shall be Collected by Contractor for no additional charge as necessary to  
 2895 accommodate the waste volume Disposed in such Containers.

2896 A. Labor unrest including, but not limited to, strike, work stoppage or slowdown, sick-out;  
 2897 picketing, or other concerted job action conducted by Contractor's employees or  
 2898 directed at Contractor is excused from performance only to the extent that the  
 2899 following requirements are met:

2900 i. Contractor provides a contingency plan to the City within ninety (90) days of  
 2901 commencement of services under this Agreement demonstrating how services  
 2902 will be provided during the period of labor unrest. The contingency plan is  
 2903 subject to City approval and Contractor shall amend the plan until it meets City  
 2904 requirements, including reasonably demonstrating how City's basic Collection  
 2905 and sanitary needs will be met to the City's satisfaction.

2906 ii. Contractor shall meet all requirements of this plan or City may revoke this excuse  
 2907 from performance offered under this Agreement and may choose to use  
 2908 enforcement provisions under this Agreement in which case Contractor is not  
 2909 excused from performance and Contractor shall be obligated to continue to  
 2910 provide service notwithstanding the occurrence of any or all of such events.

2911 3. **Collection During Labor Disruption.** Contractor shall prioritize those Collection activities it  
 2912 is able to perform during the pendency of the labor disruption, with hospitals, essential  
 2913 services, restaurants and other six (6) services days per week Customers prioritized for  
 2914 Collection on the basis of health and sanitation. In the event that a labor strike or  
 2915 disruption to Collection services should last longer than seven (7) consecutive days, City  
 2916 may contract with a third party to provide Collection services for the period of time  
 2917 limited to the time Contractor is unable to provide such services until the labor strike or  
 2918 disruption has concluded. Contractor shall notify City when the labor disruption has  
 2919 ended, and the date Contractor will resume Collection services.

## 2920 **11.8 Right to Demand Assurances of Performance**

2921 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those  
 2922 members of the public residing or doing business within City who will be adversely affected by  
 2923 interrupted waste management service, that there be no material interruption in services provided  
 2924 under this Agreement.

2925 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,  
 2926 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to  
 2927 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order  
 2928 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes  
 2929 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in  
 2930 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have,  
 2931 demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in  
 2932 such form and substance as City believes in good faith is reasonably necessary in the circumstances to  
 2933 evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide



2934 satisfactory assurances of timely and proper performance in the form and by the date required by City,  
2935 such failure or refusal shall be an event of default for purposes of Section 11.1.

## 2936 **11.9 Dispute Resolution**

2937 In the event of dispute between the City Manager and the Contractor regarding the interpretation of or  
2938 the performance of services under this Agreement which results in a material impact to the Contractor's  
2939 revenue and/or cost of operations the provisions of this Section 11.9 shall apply.

2940 A. **Meet and Confer.** In the event of disputes regarding the performance of any obligation under this  
2941 Agreement which results in a material impact to the Contractor's revenue and/or cost of  
2942 operations, the City and Contractor agree that they promptly will meet and confer to attempt to  
2943 resolve the matter between themselves.

2944 B. **Mediation.** If disputes which arise under this Agreement cannot be resolved satisfactorily  
2945 between the Parties in accordance with Section 11.9.A, the City and Contractor agree that such  
2946 disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon  
2947 independent third party.

2948 C. **Period of Time.** Insofar as allowed by Applicable Law, the period otherwise applicable for filing  
2949 claims against the City under Applicable Law shall be tolled during the period of time for which  
2950 meet and confer or mediation procedures are pending, in accordance with Sections 11.9.A and  
2951 11.9.B.

2952 D. **Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s)  
2953 pursuant to Sections 11.9.A, 11.9.B, and 11.9.C have failed and any necessary claim(s) have been  
2954 denied.

## 2955 **ARTICLE 12.** 2956 **REPRESENTATIONS AND WARRANTIES OF** 2957 **THE PARTIES**

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2958 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this  
2959 Article 12.

### 2960 **12.1 Contractor's Corporate Status**

2961 Contractor, or parent company, is a corporation duly organized, validly existing and in good standing  
2962 under the laws of the State. It is qualified to transact business in the State and has the power to own its  
2963 properties and to carry on its business as now owned and operated and as required by this Agreement.

### 2964 **12.2 Contractor's Corporate Authorization**

2965 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.  
2966 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by  
2967 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.  
2968 The Person signing this Agreement on behalf of Contractor represents and warrants that they have  
2969 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2970 **12.3 Agreement Will Not Cause Breach**

2971 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or  
2972 delivery of this Agreement or the performance by either Party of their obligations hereunder does not  
2973 conflict with, violate, or result in a breach of: (i) any Applicable Law; or, (ii) any term or condition of any  
2974 judgment, order, or decree of any court, administrative agency or other governmental authority, or any  
2975 agreement or instrument to which Contractor or City is a Party or by which Contractor or any of its  
2976 properties or assets are bound, or constitutes a default hereunder.

2977 **12.4 No Litigation**

2978 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,  
2979 proceeding or investigation, at law or in equity, before or by any court or governmental authority,  
2980 commission, board, agency, or instrumentality decided, pending, or threatened against either Party  
2981 wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:

- 2982 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 2983 B. Adversely affect the validity or enforceability of this Agreement; or,
- 2984 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity  
2985 guaranteeing Contractor's performance under this Agreement.

2986 **12.5 No Adverse Judicial Decisions**

2987 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial  
2988 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2989 **12.6 No Legal Prohibition**

2990 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in  
2991 effect on the date that Party signed this Agreement that would prohibit the performance of either their  
2992 obligations under this Agreement and the transactions contemplated hereby.

2993 **12.7 Contractor's Ability to Perform**

2994 Contractor possesses the business, professional, and technical expertise to perform all services,  
2995 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.  
2996 Contractor possesses the ability to secure equipment, facility, and employee resources required to  
2997 perform its obligations under this Agreement.

2998 **Article 13.**  
2999 **Other Agreements of the Parties**

---

3000 **13.1 Relationship of Parties**

3001 The Parties intend that Contractor shall perform the services required by this Agreement as an  
3002 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner  
3003 or agent of, or joint venture with, City. No employee or agent of Contractor shall be, or shall be deemed

3004 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and  
3005 means of performing services under this Agreement, except as expressly provided herein. Contractor  
3006 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and  
3007 agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any rights  
3008 to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City  
3009 employees by virtue of their employment with City.

### 3010 **13.2 Compliance with Law**

3011 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the  
3012 United States, the State, County, and City and with all applicable regulations promulgated by Federal,  
3013 State, regional or local administrative and regulatory agencies, now in force and as they may be enacted,  
3014 issued, or amended during the Term.

### 3015 **13.3 Governing Law**

3016 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the  
3017 State.

### 3018 **13.4 Jurisdiction**

3019 Any lawsuits, at law or in equity, between the Parties arising out of this Agreement shall be filed in a  
3020 court of competent jurisdiction in the County. With respect to venue, the Parties agree that this  
3021 Agreement is made in and will be performed in the County. The Parties waive all provisions of law  
3022 providing for a change of venue in these proceedings to any other county.

### 3023 **13.5 Binding on Successors**

3024 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and  
3025 permitted assigns of the Parties.

### 3026 **13.6 Assignment**

3027 Except as may be provided for in Article 10 (City's Right to Perform Service), neither Party shall assign its  
3028 rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other  
3029 Person without the prior written consent of the other Party. Any such assignment made without the  
3030 consent of the other Party shall be void and the attempted assignment shall constitute a material breach  
3031 of this Agreement.

3032 For purposes of this Section 13.6 when used in reference to Contractor, "assignment" shall include, but  
3033 not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets  
3034 dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of  
3035 outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may  
3036 result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger,  
3037 re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,  
3038 liquidation or other transaction to which results in a change of ownership or control of Contractor;  
3039 (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the  
3040 benefit of creditors, writ of attachment for an execution being levied against this Agreement,  
3041 appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event

3042 of a probate proceeding; and, (v) any combination of the foregoing (whether or not in related or  
3043 contemporaneous transactions) which has the effect of any such transfer or change of ownership, or  
3044 change of control of Contractor.

3045 Contractor acknowledges that this Agreement involved rendering a vital service to City's residents and  
3046 businesses, and that City has selected Contractor to perform the services specified herein based on:  
3047 (1) Contractor's experience, skill and reputation for conducting its Discarded Materials management  
3048 operations in a safe, effective, and responsible fashion, at all times in keeping with applicable laws  
3049 pertaining to Excluded Waste, regulations and best Discarded Materials management practices, and, (2)  
3050 Contractor's financial resources to maintain the required equipment and to support its indemnity  
3051 obligations to City under this Agreement. City has relied on each of these factors, among others, in  
3052 choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

3053 If Contractor requests City's consideration of and consent to an assignment, City may deny or approve  
3054 such request in its complete discretion. No request by Contractor for consent to an assignment need be  
3055 considered by City unless and until Contractor has met the following requirements:

3056 A. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and  
3057 investigation costs necessary to investigate the suitability of any proposed assignee, and to  
3058 review and finalize any documentation required as a condition for approving any such  
3059 assignment;

3060 B. Contractor shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts  
3061 times the number of years (pro-rated for partial years) remaining under this Agreement (based  
3062 on actual Rate revenues for the prior twelve (12) months);

3063 C. Contractor shall furnish City with audited financial statements of the proposed assignee's  
3064 operations for the immediately preceding three (3) operating years;

3065 D. A proforma financial statement (income statement and balance sheet) for the proposed  
3066 assignee with the projected results of operations assuming that the assignment is completed.  
3067 Such proforma financial statement shall reflect any debt to be incurred by the assignee as part  
3068 of the acquisition of Contractor's operations; and,

3069 E. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least  
3070 ten (10) years of Discarded Materials management experience on a scale equal to or exceeding  
3071 the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5)  
3072 years, the proposed assignee has not suffered any significant citations or other censure from  
3073 any Federal, State, or local agency having jurisdiction over its Discarded Materials management  
3074 operations due to any significant failure to comply with State, Federal, or local laws pertaining  
3075 to Excluded Waste and that the assignee has provided City with a complete list of such citations  
3076 and censures; (iii) that the proposed assignee has at all times conducted its operations in an  
3077 environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its  
3078 Discarded Materials management practices in accordance with sound Discarded Materials  
3079 management practices in full compliance with all Federal, State, and local laws regulating the  
3080 Collection and Disposal of Discarded Materials including Hazardous Waste; and, (v) of any other  
3081 information required by City to ensure the proposed assignee can fulfill the Terms of this  
3082 Agreement in a timely, safe and effective manner.

3083 Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor  
3084 is in default at any time during the period of consideration.

### 3085 **13.7 No Third-Party Beneficiaries**

3086 This Agreement is not intended to, and will not be construed to, create any right on the part of any third  
3087 party to bring an action to enforce any of its terms.

### 3088 **13.8 Waiver**

3089 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be  
3090 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach  
3091 of violation of the same or any other provision. The subsequent acceptance by either Party of any  
3092 monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or  
3093 concurrent breach or violation by the other Party of any provision of this Agreement.

### 3094 **13.9 Affiliated Companies**

3095 Contractor's accounting records shall be maintained on a basis showing the results of Contractor's  
3096 operations under this Agreement separately from operations in other locations, as if Contractor were an  
3097 independent entity providing service only to City. The costs and revenues associated with providing  
3098 service to City shall not be combined, consolidated or in any other way incorporated with those of other  
3099 operations conducted by Contractor in other locations, or with those of an Affiliate.

3100 If Contractor enters into any financial transactions with a Related Party Entity for the provision of labor,  
3101 equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement,  
3102 that relationship shall be disclosed to City, and in the financial reports submitted to City. In such event,  
3103 City's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or  
3104 entities.

### 3105 **13.10 Transition to Next Contractor**

3106 Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the  
3107 end of the Term, Contractor shall cooperate fully with City and any subsequent Discarded Materials  
3108 enterprise it designates to assure a smooth transition of Discarded Materials Handling Services.  
3109 Contractor's cooperation shall include, but not be limited to, providing both the City and subsequent  
3110 Discarded Materials enterprise with route lists, Billing information, lists of gate or other access codes  
3111 and information needed for entry to service areas, Container placement areas by address, levels of  
3112 service including any special needs or services required by each location, and other operating records  
3113 needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in  
3114 Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers  
3115 in coordination with the distribution of Containers by the incoming service provider. Contractor shall  
3116 cooperate with the City and incoming service provider in agreeing to the timing of Container removal; if  
3117 Parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely  
3118 manner that requires Customers to store two (2) sets of Containers, City, incoming service provider, or  
3119 another entity may remove Contractor's Containers and seek cost reimbursement from Contractor  
3120 through its performance bond, letter of credit or other means. The failure to cooperate with City  
3121 following termination shall be conclusively presumed to be grounds for specific performance of this  
3122 covenant and/or other equitable relief necessary to enforce this covenant.

3123 Contractor shall, to the maximum extent feasible provide a new service provider with all keys, security  
3124 codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible  
3125 for coordinating Transfer immediately after Contractor's final pickups, so as not to disrupt service.  
3126 Contractor shall provide City with detailed route sheets containing service names and addresses, Billing  
3127 names and addresses, monthly Rate and Service Levels (quantity, material type, and size of Containers  
3128 and pickup days) at least ninety (90) days prior to the transition date and provide an updated list two  
3129 weeks before the transition and a final list of changes the day before the transition. Contractor shall  
3130 provide means of access to the new service provider at least one (1) full calendar day (excluding  
3131 Saturday, Sunday, and Holidays as defined in Exhibit A) prior to the first day of Collection by another  
3132 party, and always within sufficient time so as not to impede in any way the new service provider from  
3133 easily servicing all Containers.

3134 Contractor to provide documentation of any Customer declining request to provide keys, security codes,  
3135 and/or remote controls used to access garages and Container enclosures.

### 3136 **13.11 Contractor's Investigation**

3137 Contractor has made an independent investigation (satisfactory to it) of the conditions and  
3138 circumstances surrounding the Agreement and the work to be performed by it.

### 3139 **13.12 Condemnation**

3140 City fully reserves the rights to acquire Contractor's property utilized in the performance of this  
3141 Agreement, by purchase or through the exercise of the right of eminent domain. This provision is  
3142 additive, and not intended to alter the rights of the Parties set forth in Article 10.

### 3143 **13.13 Notice Procedures**

3144 All notices, demands, requests, proposals, approvals, consents, and other communications, which this  
3145 Agreement requires, authorizes, or contemplates, shall be in writing and shall either be personally  
3146 delivered to a representative of the Parties at the address below or deposited in the United States mail,  
3147 first class postage prepaid, addressed as follows:

3148 If to City:

3149 City of Garden Grove  
3150 Attn: City Manager  
3151 11222 Acacia Parkways  
3152 Garden Grove, California 92840

3153

3154 If to Contractor:

3155 General Manager  
3156 Republic Services  
3157 1131 N. Blue Gum Street  
3158 Anaheim, California 92806

3159

3160 The address to which communications may be delivered may be changed from time to time by a notice  
3161 given in accordance with this Section 13.13. Notice shall be deemed given on the day it is personally

3162 delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail. Either Party may  
3163 choose to provide email notification to the other Party that notice has been deposited in the mail;  
3164 however, such email notification shall not constitute official notice.

### 3165 **13.14 Representatives of the Parties**

3166 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken  
3167 by City except as otherwise provided in this Section 13.14. Each reference to an act performed by, or  
3168 obligation of the City Manager in this Agreement is itself a delegation of authority from the City. The City  
3169 may delegate, in writing, further authority to the City Manager and/or to other City officials and may  
3170 permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers.  
3171 The Contractor may rely upon actions taken by such delegates if they are within the scope of the  
3172 authority properly delegated to them.

3173 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as  
3174 the representative of the Contractor in all matters related to the Agreement and shall inform City in  
3175 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City  
3176 may rely upon action taken by such designated representative as actions of the Contractor unless they  
3177 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

### 3178 **13.15 Compliance with Municipal Code and Code of Regulations**

3179 Contractor shall comply with those provisions of the Municipal Code of City and District's Code of  
3180 Regulations which are applicable, and with any and all amendments to such applicable provisions during  
3181 the Term of this Agreement, which further constitutes a change in Applicable Law within the meaning of  
3182 this Agreement.

### 3183 **13.16 Cooperation Following Termination**

3184 At the end of the Term or in the event this Agreement is terminated prior to the end of the Term,  
3185 Contractor shall cooperate fully with City and any subsequent Contractor to assure a smooth transition  
3186 of Discarded Materials management services. Contractor's cooperation shall include, but not be limited  
3187 to, providing operating records needed to service all properties covered by this Agreement. City may  
3188 further use Contractor's Customer information in the procurement of a new contract for Discarded  
3189 Materials management services. The failure to cooperate with City following termination or in the  
3190 procurement of a new contract shall be conclusively presumed to be grounds for specific performance  
3191 of this covenant and/or other equitable relief necessary to enforce this covenant.

### 3192 **13.17 Compliance with Immigration Laws**

3193 Contractor shall be knowledgeable of and comply with all local, State, and Federal laws which may apply  
3194 to the performance of this Agreement. Contractor warrants and represents that all of its employees,  
3195 including any and all prospective employees hired to perform services for the City under this Agreement  
3196 and the employees of any Subcontractor retained by the Contractor to perform a portion of the services  
3197 under this Agreement, are and will be authorized to perform the services contemplated by this  
3198 Agreement in full compliance with all applicable State and Federal laws, rules and regulations, including,  
3199 but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of  
3200 the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act  
3201 of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor

3202 agrees to verify the legal status of all of its employees and provide documentation of such verification  
3203 whenever requested by the City. If Contractor discovers that any employee it has retained is not in  
3204 compliance with Immigration Laws, Contractor agrees to terminate such employee.

### 3205 **13.18 Guarantee of Contractor's Performance**

3206 Pursuant to a guarantee in substantially the form attached as Exhibit G, Republic Waste Services of  
3207 Southern California, LLC, a corporation which owns all of the issued and outstanding common stock of  
3208 Contractor, has agreed to guarantee Contractor's performance of this Agreement. The Guarantee is  
3209 being provided no later than ten (10) days subsequent to the execution of this Agreement.

## 3210 **ARTICLE 14.** 3211 **MISCELLANEOUS AGREEMENTS**

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### 3212 **14.1 Entire Agreement**

3213 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof  
3214 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party  
3215 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be  
3216 construed against any Party on the basis of drafting. This Agreement may be amended only by an  
3217 agreement in writing, signed by each of the Parties hereto.

### 3218 **14.2 Section Headings**

3219 The article headings and section headings in this Agreement are for convenience of reference only and  
3220 are not intended to be used in the construction of this Agreement nor to alter or affect any of its  
3221 provisions.

### 3222 **14.3 References to Laws**

3223 All references in this Agreement to laws and regulations shall be understood to include such laws as  
3224 they may be subsequently amended or recodified, unless otherwise specifically provided herein.

### 3225 **14.4 Interpretation**

3226 This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably  
3227 and neither for nor against either Party, regardless of the degree to which either Party participated in its  
3228 drafting.

### 3229 **14.5 Amendments**

3230 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

### 3231 **14.6 Severability**

3232 If any non-material provision of this Agreement is for any reason deemed to be invalid and  
3233 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining  
3234 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had  
3235 not been contained herein.



**3236 14.7 Counterparts**

3237 This Agreement may be executed in counterparts, each of which shall be considered an original.

**3238 14.8 Exhibits**

3239 \*\*Each of the Exhibits identified as Exhibit "A" through "O" is attached hereto and incorporated herein  
3240 and made a part hereof by this reference. In the event of a conflict between the terms of this  
3241 Agreement and the terms of an Exhibit, the terms of this Agreement shall control. In the event of a  
3242 conflict between Exhibit J, and any other Exhibit(s), such other Exhibit(s) shall control.

**3243 14.9 Non-Waiver Provision**

3244 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided  
3245 for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or  
3246 subsequent failures to perform whether determined to be a breach, excused performance, or  
3247 unexcused defaults by the other Party.

**3248 14.10 Attorneys' Fees**

3249 If either Party to this Agreement is required to initiate or defend or is made a Party to any action or  
3250 proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding,  
3251 in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to  
3252 reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and, in addition,  
3253 a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such  
3254 action, taking depositions and discovery and all other necessary costs the court allows which are  
3255 incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such  
3256 action and shall be enforceable whether or not such action is prosecuted to judgment.

3257 IN WITNESS WHEREOF, this Agreement is entered by the Parties hereto in Orange County, California on  
3258 the day and year first above written.

**City of Garden Grove,**  
A Municipal Corporation

DocuSigned by:

7/27/2022

B4F3511E7D5F455...  
City Manager **scott stiles** Date

**Garden Grove Sanitary District,** a California  
special district

DocuSigned by:

7/27/2022

B4F3511E7D5F455...  
General Manager Date

**"CONTRACTOR"** Consolidated Disposal Service, LLC

DocuSigned by:

7/27/2022

64176DC89B094E7...  
Signature Date

Mike Caprio

Print Name of Signatory

Vice President

Title of Signatory

Signature

Date

Print Name of Signatory

Title of Signatory

City Business License #

**APPROVED AS TO FORM:**

DocuSigned by:

7/18/2022

61EE778B4441...  
City Attorney/General Counsel Date

**ATTEST:**  
DocuSigned by:

7/27/2022

836DF295DAD44E7...  
City Clerk/Secretary Date

3259

**EXHIBIT A:  
DEFINITIONS**

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## **EXHIBIT A DEFINITIONS**

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:

**“AB 1826”** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

**“AB 341”** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as “AB 341”, as amended, supplemented, superseded, and replaced from time to time.

**“AB 939”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

**“Abandoned Waste”** means Recyclable Materials, Organic Materials, Solid Waste, C&D, Excluded Waste, Bulky Items, or other materials which have been abandoned, littered, or illegally dumped in the public right of way or on public or City property.

**“Agreement”** means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

**“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

**“Approved C&D Facility”** means the C&D facility(ies) identified in Exhibit N.

**“Approved Facility(ies)”** means any one (1) of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; Approved Transfer Facility; Approved C&D Facility; and/or Approved Reusable Materials Processing Facility.

**“Approved Organic Materials Processing Facility”** means the Organics Materials Processing Facility(ies) identified in Exhibit N.

**“Approved Processing Facility(ies)”** means any one (1) of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; Approved C&D Facility; or, Approved Reusable Materials Processing Facility.

**“Approved Recyclable Materials Processing Facility”** means the Recyclable Materials Processing Facility(ies) identified in Exhibit N.

**“Approved Reusable Materials Processing Facility”** means the Reusable Materials Processing Facility(ies) identified in Exhibit N.

## **EXHIBIT A DEFINITIONS**

**“Approved Transfer Facility”** means Transfer facility(ies) identified in Exhibit N.

**“Bin”** means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

**“Blue Container”** means a Container where either: (a) the lid of the Container is in blue color, or (b) the body of the Container is blue in color and the lid is either blue, gray, or black in color. Hardware such as hinges and wheels on a Blue Container may be any color. Blue Containers shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials, which includes non-putrescible and non-hazardous Recyclable wastes such as cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

**“Brown Container”** means a Container for the purpose of storage and Collection of Source Separated Food Waste and has the same meaning as in 14 CCR Section 18982.2(a).

**“Bulky Item”** means discarded Appliances (including refrigerators), furniture, tires, carpets, mattresses, E-Waste, bundled and tied Yard Trimmings and/or wood waste, and similar large items which can be handled by two (2) people, weigh no more than two hundred (200) pounds, and require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. Customer must have generated the Bulky Items at the service address wherein the Bulky Items are Collected. Bulky Items do not include abandoned automobiles, large auto parts, trees, Construction and Demolition Debris, or items herein defined as Excluded Waste.

**“Business Days”** mean days during which the City offices are open to do business with the public.

**“California Code of Regulations (CCR)”** means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

**“CalRecycle”** means California's Department of Resources Recycling and Recovery.

**“Cardboard”** means corrugated fiberboard consisting of a fluted corrugated sheet and one (1) or two (2) flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.

**“Cart”** means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

**“Change in Law”** means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- A. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,

## **EXHIBIT A DEFINITIONS**

- B. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

**“City”** means the City of Garden Grove, a municipal corporation, and all the territory lying within its boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

**“City Council”** means the duly elected representative council, or its successor municipal governing body, of the City.

**“City Fees”** means all fees payable to the City, identified and referenced in Article 7 of this Agreement.

**“City Limits” and “District Limits”** means the territorial boundaries of the City and the District, respectively, together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Garden Grove, and which are from time to time amended to reflect changes.

**“City Manager”** means the City Manager of the City of Garden Grove or their designee. The City Manager is, by adopted regulations of the District’s Board of Directors, the General Manager of the District.

**“Collect” or “Collection”** (or any variation thereof) means the act of taking possession of Recyclable Materials, Organic Materials, Solid Waste, Bulky Items, and other material at the place of generation in City.

**“Commercial Business or Commercial”** shall mean a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Dwelling. A Multi-Family Dwelling that consists of fewer than five (5) units is not a Commercial Business.

**“Commercial Edible Food Generator”** includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

**“Commercial Premises”** includes Premises upon which business activity is conducted including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations and Multi-Family Residential facilities, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, Premises upon which Multi-Family facilities, hotels and motels are operated, shall be deemed to be Commercial Premises.

## **EXHIBIT A DEFINITIONS**

**“Community Composting”** means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one (1) time does not exceed one hundred (100) cubic yards and seven hundred fifty (750) square feet, as specified in 14 CCR Section 6 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

**“Compactor”** means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to forty (40) cubic yard Roll-Off Box Compactors serviced by roll-off Collection vehicles.

**“Complaint”** shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor’s performance, of its duties under this Agreement; (2) a violation by Contractor of this Agreement; or, (3) an SB 1383 Non-Compliance Complaint.

**“Compostable Plastics” or “Compostable Plastic”** means plastic materials that meet the ASTM D6400 standard for Compostability.

**“Composting” or “Compost”** (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

**“Construction and Demolition Debris (C&D)”** includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Construction and Demolition Debris includes rocks, soils, tree remains, and other Yard Trimmings which results from land clearing or land development operations in preparation for construction.

**“Container(s)”** mean Bins, Carts, Compactors, and Roll-Off Boxes.

**“Contamination Processing Fee Notice”** means the notice as described in Section 4.10.A.5.

**“Contractor”** means Republic Waste Services of Southern California, LLC dba, Garden Grove Disposal, organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

**“Contractor’s Compensation”** means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

**“Contractor’s Contract Administrator”** means the individual authorized by Contractor as described by Section 5.7.D.1.

**“County”** means the County of Orange, a political subdivision of the State of California.

**“County Agreement”** means that certain waste Disposal agreement, as the same may be amended from time to time, entered into among various Orange County cities, including specifically the City of Garden



## **EXHIBIT A DEFINITIONS**

Grove and/or Garden Grove Sanitary District, and the County of Orange relating to the use of County landfills for the Disposal of Solid Waste collected in such cities, and which is on file in the office of City's City Clerk. Exhibit M contains the County waste Disposal agreement, which was current as of the Effective Date of this Agreement.

**"Courtesy Pick-Up Notice"** means the Contractor's notice to Customer(s) as described in Section 4.10.A.3.

**"Curb" or "Curbside"** (or any variation thereof) means the cornered edging between the street and sidewalk. Curb or Curbside also means and describes the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

**"Customer"** means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

**"Customer Account Information Database"** means the Customer Account Information Database as identified in Section 4.6 that shall be developed, maintained, and monitored in accordance with the requirements of this Agreement.

**"Customer Type"** means the Customer's sector category including, but not limited to, Single-Family, Multi-Family, Commercial, Roll-Off Box, and City.

**"Designated Disposal Facility(ies)"** means the Orange County Landfill Disposal Facilities that are owned and operated by the County of Orange.

**"Designated Waste"** Designated Waste consists of those substances classified as Designated Waste by the State, in Section 13173 of the California Water Code ((CA Water Code § 13173 (2017) as may be amended from time to time, and is defined as either of the following:

- A. Hazardous Waste that has been granted a variance from Hazardous Waste management requirements pursuant to Section 25143 of the Health and Safety Code.
- B. Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the State as contained in the appropriate State water quality control plan.

**"Discarded Materials"** means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

**"Disposal" or "Dispose"** (or any variation thereof) means the final disposition of Solid Waste, or Processing Residue at a Disposal Facility.

**"Disposal Facility"** means a landfill, or other facility for ultimate Disposal of Solid Waste.

## **EXHIBIT A DEFINITIONS**

**“Divert” or “Diversion”** (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

**“Dwelling Unit”** means any individual living unit in a; Single-Family Dwelling (SFD) or Multi-Family Dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.

**“Edible Food”** means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

**“Effective Date”** means the date on which the latter of the two (2) Parties signs this Amended and Restated Agreement.

**“E-Waste”** means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

**“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and Filters, or household batteries when properly placed for Collection by Contractor as set forth in this Agreement.

**“Federal”** means belonging to or pertaining to the Federal government of the United States.

**“Field Supervisor”** means the individual authorized by Contractor as described by Section 5.7.D.2.

## **EXHIBIT A DEFINITIONS**

**“Flow Control”** means City right to direct Discarded Materials to a facility of the City’s choosing.

**“Food Recovery”** means actions to Collect and distribute food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

**“Food Recovery Organization”** means an entity that primarily engages in the Collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

**“Food Recovery Service”** means a Person or entity that Collects and Transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

**“Food Scraps”** means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.

**“Food-Soiled Paper”** means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

**“Food Waste”** means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Organic Materials.

**“Franchise Fee”** means the fee paid by Contractor to the City as described in Section 7.1.

**“Garbage and Trash Collection Index”** or **“GTCI”** means the Garbage and Trash Collection index (GTCL) (CUUR0000SEHG02) in U.S. city average, all urban consumers, not seasonally adjusted.

**“Generator”** means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes Discarded Materials to become subject to regulation.

**“Gray Container”** means a Container where either: (a) the lid of the Container is gray or black in color, or (b) the body of the Container is entirely gray or black in color and the lid is gray or black in color. Hardware

## **EXHIBIT A DEFINITIONS**

such as hinges and wheels on a Gray Container may be any color. Gray Containers shall be used for the purpose of storage and Collection of Gray Container Waste.

**"Gray Container Waste"** means Solid Waste that is Collected in a Gray Container that is part of a three- or four-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b).

**"Green Container"** means a Container where either: (a) the lid of the Container is green in color, or (b) the body of the Container is green in color and the lid is green, gray, or black in color. Hardware such as hinges and wheels on a Green Container may be any color. Green Containers shall be used for the purpose of storage and Collection of Source Separated Green Container Organic Waste, which includes Green Waste and Organic Waste.

**"Gross Receipts"** shall mean and include all monies, fees, charges, consideration, and revenue received or imputed to Republic and/or any Affiliate of Republic, in connection with, arising from, or in any way attributable to the Solid Waste handling services carried out by or on behalf of Republic pursuant to this Agreement. Gross Receipts includes, without limitation, all Customer charges imposed and collected for Solid Waste handling services, other fees imposed and collected by Republic pursuant to this Agreement and fees imposed and collected in connection with temporary services. In calculating the total amount of Gross Receipts no deductions or subtractions of any kind shall be made, such as Franchise Fees, other payments made by Republic to City pursuant to this Agreement, fines, penalties, claims, settlements, judgments, or any other cost of doing business. If an administrative fee (an "AB 939 Fee") is established by City and collected by Republic pursuant to Public Resources Code Sections 41901-02 and notwithstanding anything in this definition to the contrary, for purposes of calculating Franchise Fees due to City by Republic, Gross Receipts shall be deemed to not include an amount equal to AB 939 Fees collected by Republic and paid to City. Notwithstanding the foregoing, revenue received from the sale of Recyclables shall be excluded from Gross Receipts.

**"Hazardous Substance"** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant", or "toxic substances", or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

**"Hazardous Waste"** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and

## **EXHIBIT A DEFINITIONS**

Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

**“Holidays”** are defined as New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**“Household Hazardous Waste” or “HHW”** means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil and Filter, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

**“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

**“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.6.

**“Mulch”** means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one (1) or more of the following types of Facilities:
  - 1. A Compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10); Guidance: Note that this criteria disallows Mulch produced from chipping and grinding operations to count toward fulfillment of a jurisdiction’s annual Organic Waste product procurement target;
  - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
  - 3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

**“Multi-Family,” “Multi-Family Dwelling,” or “MFD”** means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless of whether residence therein is temporary or permanent), including such Premises when combined in the same building with Commercial establishments, that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in

## **EXHIBIT A DEFINITIONS**

Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive individual service and are billed separately shall not be considered Multi-Family.

**"Municipal Code"** means City's Municipal Code of Ordinances, the District's Code of Regulations, and all uncodified ordinances duly adopted by City, and as amended from time to time.

**"Non-Collection Notice"** means the notice as described in Section 4.10.A.4.

**"Occupant"** means the Person who occupies a Premises.

**"Organic Materials"** or **"Organics"** means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

**"Organic Waste"** means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

**"Owner"** means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

**"Party" or "Parties"** refers to the City and Contractor, individually or together.

**"Person(s)"** means any individual, firm, association, organization, partnership, consortium, corporation, trust, joint venture, Commercial entity, governmental entity, public entity, or any other legal Person.

**"Premises"** means any land or building in the City where Recyclable Materials, Organic Materials, or Solid Waste are generated or accumulated.

**"Prior Agreement"** means the "Agreement Between City of Garden Grove, Garden Grove Sanitary District and Republic Waste Services of Southern California, LLC dba Garden Grove Disposal for Solid Waste Handling Services," and all amendments thereof.

**"Processing" or "Process"** means to prepare, treat, or convert through some special method.

**"Processing Facility"** means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

**"Prohibited Container Contaminants"** means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Recyclable Materials for the City's Collection program; (ii) Discarded Materials placed in the Green or Brown Container that are not identified as acceptable Organic Materials for the City's Collection program; (iii) Discarded Materials placed in the Gray Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City's Blue, Green or Brown

## **EXHIBIT A DEFINITIONS**

Containers or otherwise managed under the City's Collection program; and, (iv) Excluded Waste placed in any Container.

**"Proprietary Information" or "Proprietary"** means that information provided by Contractor to the City which is protected from disclosure by the California Public Records Act and meets that definition of Proprietary Information. Nothing shall be considered Proprietary which is required to be submitted to the City in any report described in this Agreement. Contractor's Customer lists for Customers served under this Agreement are specifically not considered Proprietary for the purposes of this Agreement, however, the City may protect such information from disclosure consistent with the provisions of the Public Records Act.

**"Public Street"** means all City-owned and maintained paved areas between the normal Curb line of a roadway, including public parking lots, roadway dividers, and medians.

**"Rate"** means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period Zero and Rate Period One are presented in Exhibit D. The Rates approved by City are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

**"Rate Period"** means a twelve (12) month period, commencing July 1 and concluding June 30.

**"Recyclable Materials" or "Recyclables"** means those Discarded Materials that: the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, gabletop beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvex non-tearing paper envelopes); chipboard; corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin, or bi-metal cans; mixed plastics such as plastic containers (numbers one (1) to seven (7)), except expanded Polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; and, film plastic (when clean, dry, and contained inside of a plastic bag).

**"Recycle" or "Recycling"** (or any variation thereof) means the Process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility, materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling includes Processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

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**“Recycling Coordinator”** means the individual authorized by Contractor as described by Section 5.7.D.3.

**“Related-Party Entity”** means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be affiliated with Contractor and included within the term “Related-Party Entity” as used herein. A Related-Party Entity shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect Ownership interest exists, the constructive Ownership provisions of Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, the (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded, and percentage interests shall be determined on the basis of the percentage of voting interest or value that the Ownership interest represents, whichever is greater. Related-Party Entities shall be limited to those businesses that are directly or indirectly involved in the provision of service under this Agreement.

**“Renewable Natural Gas” or “RNG”** means gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

**“Residential”** shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.

**“Residue”** means those materials that, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

**“Reusable Materials”** means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

**“Roll-Off Box”** means an open-top Container with a capacity of ten (10) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

**“SB 1383”** means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.



## **EXHIBIT A DEFINITIONS**

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

**“Self-Hauler” or “Self-Haul”** (or any variation thereof) means a Person who hauls Discarded Materials, recovered material, or any other material, that such Person generates at their own Premises, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste from Premises they own and operate, as defined in 14 CCR Section 18982(a)(66)(A).

**“Service Level”** refers to the size of a Customer’s Container(s) and the frequency of Collection service.

**“Sharps”** means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

**“Single-Family” or “SFD”** means any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses, and each independent unit of duplex, tri-plex, or four-plex Residential structures, regardless of whether each unit is separately billed for their specific Service Level. Multi-Family properties of five (5) or more units that receive Single-Family Cart service are considered Single-Family if Contractor bills each unit.

**“Solid Waste”** means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

**“Source Separated”** means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

**“Split-Bin”** means a Bin that is split or divided into two (2) sections in order to segregate two (2) Source Separated Discarded Material types in one (1) Container.

**“State”** means the State of California.

**“Subcontractor”** means a Person who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractors.

## **EXHIBIT A DEFINITIONS**

**“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

**“Tier One Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one (1) of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than ten thousand (10,000) square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

**“Tier Two Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one (1) of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with two hundred fifty (250) or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet.
- B. Hotel with an on-site food facility and two hundred (200) or more rooms.
- C. Health facility with an on-site food facility and one hundred (100) or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet.
- G. A local education agency with an on-site food facility. If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

**“Ton” or “Tonnage”** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

**“Townhouse”** means an attached or semi-attached Single-Family Premises within a group of attached or semi-attached Single-Family Premises, regardless of whether the Premises is billed individually or through a central account (e.g., homeowner association, property manager), wherein each unit maintains an individual Collection service subscription, as determined in writing by the City Manager.

## **EXHIBIT A DEFINITIONS**

**“Transfer”** means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

**“Transportation” or “Transport”** (or any variation thereof) means the act of conveying Collected materials from one (1) location to another.

**“Universal Waste” or “U-Waste”** means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.

**“Working Days”** means days that the Contractor is required to provide regularly scheduled Collection services under this Agreement.

**“Yard Trimmings”** means those Discarded Materials that will decompose and/or putrefy including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in City legislation for Collection and Processing as Organic Materials under this Agreement. Yard Trimmings does not include items herein defined as Excluded Waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

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**EXHIBIT B:  
DIRECT SERVICES**

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## **EXHIBIT B: DIRECT SERVICES**

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The following Exhibits (B1 through B4) describe the programs that, in aggregate, represent the direct services to be performed under this Agreement by the Contractor.

Each of the following Exhibits (B1 through B4) present the programs to be provided to each Customer Type by Contractor. Within each program description are specific requirements for the:

- Type and size of Containers or Service Level to be offered by Contractor under each program;
- Frequency of service to be offered by Contractor to Customers;
- Location of service, including an indication of whether or not additional charges may apply if a Customer selects a location that is more costly to serve (e.g., back-yard service);
- Materials that are acceptable or prohibited within the program;
- Provision of additional services to the Customer if the standard Service Levels are inadequate, either on a regular or periodic basis, and an indication of whether or not additional charges may apply; and/or,
- Other requirements and considerations of the program.

Contractor shall provide the services for each program described in accordance with the specific program requirements detailed in Exhibits B1 through B4 and Contractor shall promote such programs using the public education and outreach methods described in Exhibit C.

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**EXHIBIT B1:**  
**SINGLE-FAMILY RESIDENTIAL SERVICES**

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## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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#### **1. Recyclable Materials Collection**

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers one (1) time per week from Single-Family (including Townhouse) Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

<b>Containers:</b>	Carts
<b>Container Sizes:</b>	32-, 64-, and 96-gallons (or comparable sizes approved by the City). Standard Container size is 96-gallon. 64 or 32-gallon service shall be made available for no reduction in charge, upon request by Customer.
<b>Service Frequency:</b>	One (1) time per week on the same day as Organic Materials and Solid Waste Collection services.
<b>Service Location:</b>	Curbside or alley
<b>Acceptable Materials:</b>	Recyclable Materials
<b>Prohibited Materials:</b>	Solid Waste, Organic Materials, Excluded Waste
<b>Additional Service:</b>	Single-Family Customers shall receive one (1) Recyclable Materials Cart standard and may request an unlimited number of additional Recyclable Materials Carts at no additional charge.
<b>Other Requirements:</b>	Contractor may refuse to Collect a Recyclable Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3 of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

#### **2. Organic Materials Collection**

Contractor shall Collect Organic Materials placed in Contractor-provided Carts one (1) time per week from Single-Family Customers (including Townhouses) and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing.

<b>Containers:</b>	Carts
<b>Container Sizes:</b>	32, 64, 96-gallons (or comparable size approved by the City). Standard Container size is 96-gallon. 64 or 32-gallon service shall be made available for no reduction in charge, upon request by Customer.
<b>Service Frequency:</b>	One (1) time per week on the same day as Recyclable Materials and Solid Waste Collection service.
<b>Service Location:</b>	Curbside
<b>Acceptable Materials:</b>	Organic Materials (including Yard Trimmings and Food Waste)
<b>Prohibited Materials:</b>	Recyclable Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Single-Family Customers shall receive one (1) Organic Materials Cart standard. Contractor shall provide additional Organic Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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City.

**Other Requirements:** Contractor shall make available to all Single-Family Customers and new Customers, kitchen pails upon program rollout, designed to contain Food Scraps prior to placement in the Customer's Organic Materials Cart. City shall approve kitchen pail specifications prior to ordering and distribution. Additional pails are to be made available for the Rate in the approved Rate schedule. Upon City request, Contractor will make available pails that are provided by the City at Contractor's facilities located in Anaheim and Huntington Beach for pickup by City Customers. Contractor may request identification to confirm City residency.

If Contractor's Approved Organic Materials Processing Facility accepts Compostable Plastic bags, Single-Family Customers may place Organic Materials in Compostable Plastic bags and then place the bagged Organic Materials into their Organic Materials Carts for Collection. Such bags must be labeled as "Compostable" by the manufacturer and certified by BPI. Contractor shall submit the required Compostable Plastic Processing notifications in accordance with Section 4.1.J and Exhibit F of the Agreement.

Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

### **3. Solid Waste Collection**

Contractor shall Collect Solid Waste placed in Contractor-provided Carts one (1) time per week from Single-Family Customers (including Townhouse) and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

**Containers:** Carts

**Container Sizes:** 32-, 64-, and 96-gallons (or comparable sizes approved by the City). Standard Container size is 96-gallon. 64 or 32-gallon service shall be made available for a reduction in charge, upon request by Customer.

**Service Frequency:** One (1) time per week on the same day as Recyclable Materials and Organic Materials Collection service.

**Service Location:** Curbside

**Acceptable Materials:** Solid Waste

**Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste

**Additional Service:** Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City.

**Other Requirements:** None

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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#### **4. On-Call Bulky Item/Reusable Materials Collection**

Contractor shall Collect Bulky Items, Reusable Materials, and other materials described herein from Single-Family Customers (including Townhouse). Contractor shall Transport all Collected materials to the appropriate Approved Facility or Designated Disposal Facility for reuse, Processing, or Disposal.

- Containers:** Not applicable
- Service Level:** Up to ten (10) Bulky Items/Reusable Materials
- Service Frequency:** Three pickups per year per household
- Service Location:** Curbside
- Acceptable Materials:** Reusable Materials, Bulky Items, Recyclable Materials, Yard Trimmings, Electronic Waste, and Solid Waste
- Prohibited Materials:** Food Scraps, Hazardous Waste, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts) that exceeds two hundred (200) pounds in weight
- Additional Service:** Contractor shall Collect additional Acceptable Materials (as described herein) that exceed the required Service Level (as requested by Customer) and may charge the appropriate Rates approved by the City for such additional service.
- Other Requirements:** Contractor shall provide the service to the Customer within a reasonable time but not longer than seven (7) days of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor. Contractor shall not Dispose of materials Collected through the on-call Bulky Item/Reusable Materials Collection program unless the materials cannot be reused or Recycled. Contractor shall Process and Dispose of Bulky Items and Reusable Materials Collected from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; and if none of the other options are practicable; then, (4) Dispose.

#### **5. Holiday Tree Collection**

Annually, commencing the day after December 25 and three (3) weeks thereafter, the Contractor shall Collect holiday trees from Single-Family Customers (including Townhouse). Customers are required to place the holiday trees Curbside on the Customer's regularly scheduled Collection day. Holiday trees must be removed from stands; cut into lengths no longer than four (4) feet; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria. The Contractor shall affix a Non-Collection Notice to any non-Collected tree informing the Customer of the reason(s) for Non-Collection. Contractor may charge City-approved Rates to return and Collect a previously non-Collected holiday tree that has been corrected and set out. Contractor shall deliver all Collected holiday trees to the Approved Organic Materials Processing Facility for Processing.

Holiday tree Collection services shall be provided at no additional cost to the City or the Customer.

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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#### **6. Alternative Service Location for Disabled Single-Family Customers**

Contractor shall allow for Persons that have a disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises (including Townhouse Premises) to receive Collection services at a location other than Curbside at no extra charge to the Customer. Contractor shall review all applications (which shall include statements from physicians) made by Customers to determine conformance with this exemption provision and shall grant exemptions, if applicable. Contractor shall make reasonable accommodations with regard to provision of and servicing of Containers (e.g., Container size and type, placement of Containers for Collection) at no additional cost to the Customer. Upon Customer request, Contractor may make such alternative service locations available to Single-Family Customers that do not have a disability (as defined herein) for an additional, City-approved Rate.

#### **7. Sharps Collection Program**

Contractor shall deliver or arrange for delivery to Customers, at no additional charge, within one (1) week of request, a pre-paid, postage-paid mail-back container to safely collect Sharps and send Sharps for proper Disposal. Residents are limited to four (4) containers at no additional charge in a twelve (12) month period. Each container shall be of adequate volume to accommodate the needs of a diabetic Person for a three (3) month period.

#### **8. Temporary Bin Service**

Contractor shall provide exclusive temporary Bin service to Customers upon request for Collection of Solid Waste, Recyclable Materials, and Organic Materials. Contractor must deliver a temporary Bin to a Customer by the following Business Day (excluding Saturday, Sunday, or Holidays), if requested by 12:00 noon; otherwise, delivery shall be no later than the second day. Rates for temporary Bin service are listed separately in the approved Rate schedule.

#### **9. Curbside Grease Collection Program**

If ever required by the applicable sanitation district or other regulatory agency, Contractor shall design a program for the collection of grease, fat, oils, and similar waste generated from household cooking activities (the "Curbside Grease Collection Program") that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all Applicable Laws and regulations. At such time as a Curbside Grease Collection Program is implemented and in order to ensure that Contractor is fairly compensated for any additional costs incurred in implementing such a program, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum Rates set forth on Exhibit D in order to compensate Contractor for implementing such a program.

#### **10. Residential Non-Controlled Medication Collection Program**

If requested to do so by City, or otherwise required by law, Contractor shall design and present a program to City for the Collection of unused non-controlled medicines (the "Non-Controlled Medication Collection

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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Program") that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure any Non-Controlled Medication Collection Program complies with all Applicable Laws and regulations. It is anticipated that any Non-Controlled Medication Collection Program at a minimum will allow for Customers to mail unused medication (excepting controlled substances) to a specific Collection location, in specialized packaging provided by Contractor, and/or deliver unused medication (excepting controlled substances) to a location in or near City designated by Contractor. At such time as (if) a Non-Controlled Medication Collection Program is implemented, and if necessary, in order to ensure that Contractor is fairly compensated for the additional costs incurred in implementing such a program, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum Rates set forth in approved Rate schedule.

Contractor will assist the City in increasing awareness of medication takeback programs provided by local pharmacies, or programs offered by other government entities. Promotional activities will include posting on Contractor's website, inclusion in the annual brochures/mailings mailed to each Residential Premises Customer, billing inserts, social media targeted outreach, and press releases to local news outlets.

#### **11. Household Hazardous Contaminant Program**

If requested to do so by City, or otherwise required by law, Contractor shall design a program for the Curbside collection of hazardous contaminants that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the program complies with all Applicable Laws and regulations. It is anticipated that any such program at a minimum will allow for Customers to deposit at a specific Collection location, in specialized packaging provided by Contractor and/or deliver any such contaminant to a location in or near City, designated by Contractor. At such time as (if) such program is implemented, and if necessary, in order to ensure that Contractor is fairly compensated for the additional costs incurred in implementing such a program, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum Rates set forth in the approved Rate schedule.

Contractor will assist the City in increasing awareness of the County's drop-off locations for HHW, including drop-off at Contractor's Anaheim (CVT) and Huntington Beach facilities. Promotional activities will include posting on Contractor's website, inclusion in the Annual Brochures/Mailings mailed to each Residential Premises Customer, billing inserts, social media targeted outreach, and press releases to local news outlets.

#### **12. Solid Waste Cart Overage**

Overage pickups will be provided at no additional charge for two (2) weeks beginning December 26. This service is limited to Solid Waste that could otherwise be placed in the Solid Waste Cart, and not Bulky Items which are Collected in accordance with this Exhibit B1.

Contractor will notify all residents annually, beginning within thirty (30) days of effectiveness of this Agreement, of this service. New Customers shall be notified of this service upon initiation of new Collection services.

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**EXHIBIT B2:**  
**MULTI-FAMILY RESIDENTIAL SERVICES**

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## EXHIBIT B2

### MULTI-FAMILY RESIDENTIAL SERVICES

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#### 1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Multi-Family Customers receiving Solid Waste Bin service in accordance with the approved Rate schedule and shall Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing. Recyclable Materials Collection services shall be provided to Multi-Family Customers in accordance with the approved Rate schedule.

- Containers:** Carts, Bins
- Container Sizes:** 35-, and 96-gallon Carts (or comparable size approved by the City); and 2-, and 3-cubic yard Bins, and 3 cubic yard Split-Bins (on case by-case basis). As requested by Customer
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week (as requested by Customer).
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall make contact with each and every Multi-Family Customer to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Multi-Family Customer at the same time that the Contractor delivers Solid Waste Containers.
- Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply).
- Contractor may refuse to Collect a Recyclable Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

#### 2. Organic Materials Collection

Contractor shall Collect Organic Materials in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Organic Materials Collection services shall be provided to Multi-Family Customers receiving Solid Waste Bin service in accordance with the approved Rate schedule.

## EXHIBIT B2

### MULTI-FAMILY RESIDENTIAL SERVICES

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<b>Containers:</b>	Carts, Bins
<b>Container Sizes:</b>	32-, and 64-gallon Carts (or comparable size approved by the City); and, 2-cubic yard Bins. As requested by Customer.
<b>Service Frequency:</b>	Up to three (3) times per week but not less than one (1) time per week, as requested by the Multi-Family Customer.
<b>Service Location:</b>	Curbside or other Customer-selected service location at the Multi-Family Premises
<b>Acceptable Materials:</b>	Organic Materials (including Yard Trimmings and Food Waste)
<b>Prohibited Materials:</b>	Recyclable Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
<b>Other Requirements:</b>	Contractor shall provide to all Multi-Family Dwelling Units kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Container. The City shall approve kitchen pail specifications prior to ordering and distribution.

Contractor shall make contact with each and every Multi-Family Customer to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Multi-Family Customer at the same time that the Contractor delivers Solid Waste Containers.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

### 3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

<b>Containers:</b>	Carts, Bins
<b>Container Sizes:</b>	96-gallon Carts (or comparable size approved by the City); and 2-, 3-, 4-, 5-, and 6-cubic yard Bins, 3-cubic yard mini packer, and 3-cubic yard Split-Bins (offered on a case-by-case basis). As requested by Customer.

## EXHIBIT B2

### MULTI-FAMILY RESIDENTIAL SERVICES

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<b>Service Frequency:</b>	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer.
<b>Service Location:</b>	Curbside or other Customer-selected service location at the Multi-Family Premises.
<b>Acceptable Materials:</b>	Solid Waste.
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Excluded Waste.
<b>Additional Service:</b>	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.
<b>Other Requirements:</b>	Contractor shall make contact with each and every Multi-Family Customers to determine appropriate Container sizes and service frequency.  Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply).

#### 4. Bulky Item/Reusable Materials Collection

Contractor shall Collect Bulky Items, Reusable Materials, and other materials described herein from Multi-Family Customers. Contractor shall Transport all Collected materials to the appropriate Approved Facility for reuse, Processing, or Disposal.

<b>Containers:</b>	Not applicable
<b>Service Level:</b>	Multi-Family Premises with Cart service receive the same Service Level as Single-Family. Multi-Family Premises with Bin service receive ten (10) Bulky Items Collected three (3) times per Dwelling Unit in each Multi-Family complex per year.
<b>Service Frequency:</b>	Multi-Family Premises with Cart services – Same as Single-Family. Multi-Family with Bin service – three (3) times per year per Dwelling Unit.
<b>Service Location:</b>	Curbside
<b>Acceptable Materials:</b>	Reusable Materials, Bulky Items, Recyclable Materials, Yard Trimmings, Electronic Waste and Solid Waste.
<b>Prohibited Materials:</b>	Food Scraps, Hazardous Waste, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts) that exceeds two hundred (200) pounds in weight.
<b>Additional Service:</b>	Contractor shall provide additional Bulky Item/Reusable Materials Collections to Multi-Family Customers and shall Collect additional Acceptable Materials (as described herein) that exceed the required Service Level (as requested by Customer) and may charge the appropriate Rates approved by the City for such additional service.
<b>Other Requirements:</b>	Contractor shall provide the service to the Customer within one (1) Working Day of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor. Contractor shall not Dispose of materials Collected through the on-call Bulky Item/Reusable Materials Collection program unless the materials cannot be reused or Recycled. Contractor shall Process and Dispose of Bulky Items and Reusable Materials Collected from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

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compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; and if none of the other options are practicable, (4) Dispose.

#### **5. Holiday Tree Collection**

Annually, commencing the day after December 25 and three (3) weeks thereafter, or as otherwise approved by the City Manager, Contractor shall Collect Holiday trees from Multi-Family Customers at a mutually agreed upon time, date, and designated Collection location, as arranged by the Contractor and each Multi-Family property Owner or manager. Contractor shall offer each Multi-Family property Owner or manager the option to receive holiday tree Collection service in Bins or Roll-Off Boxes, which Contractor shall provide for such service. Contractor shall also offer each Multi-Family property Owner or manager the option to receive un-containerized holiday tree Collection service Curbside, or from designated location at the Multi-Family Premises mutually agreed upon between Contractor and the property Owner or manager.

Holiday trees must be removed from stands; cut into lengths no longer than four (4) feet; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect Holiday trees that do not meet the aforementioned criteria and/or are not placed at the agreed upon Collection location and time period. The Contractor shall affix a Non-Collection Notice to any non-Collected Holiday tree informing the Customer of the reason(s) for non-Collection.

#### **6. Scout Vehicles**

Upon Customer request and approval by the City Manager, Contractor shall provide scout service in accordance with the approved Rate schedule, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection, or Collecting directly from Container storage location, or retrieve a Container when operationally required in order to safely position the Container for Collection. In the event of a dispute between Contractor and Customer as to whether scout service will be used, the City Manager will make the final determination.

Customers requiring Bin pushout service and scout service shall only be charged for scout service in accordance with the approved Rate schedule.

If Contractor must place a Container in the public right-of-way to facilitate Collection, Contractor shall not permit the Container to remain in the public right-of-way over one (1) hour. If the Container is stored under a chute for Collection, the Container must be serviced and returned immediately.

Any changes to the Customer scout service list shall be approved by City prior to Contractor adding or removing this service for any Customer.

#### **7. Bin Pushout Service**

Upon Customer request, Contractor shall provide Bin pushout service, whereby Contractor will move Containers manually to facilitate Collection. The Contractor may charge the pushout Rates included in the approved Rate schedule. For Containers in Bin enclosures, the measurement of distance shall be from location of the Bin once removed from the enclosure to the point of Collection. In the event of a dispute

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

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between Contractor and Customer as to whether pushout service will be used, the City Manager will make the final determination. If a Bin pushout fee is charged, then a scout service fee shall not be charged.

If Contractor must place a Bin in the public right-of-way to facilitate Collection, Contractor shall not permit the Bin to remain in the public right-of-way over one (1) hour. If the Bin is stored under a chute for Collection, the Bin must be serviced and returned immediately.

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**EXHIBIT B3:  
COMMERCIAL SERVICES**

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## EXHIBIT B3 COMMERCIAL SERVICES

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### 1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Commercial Customers subscribing to Recyclable Materials Collection service and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing. Recyclable Materials Collection services shall be provided to Commercial Customers in accordance with the approved Rate schedule.

- Containers:** Carts, Bins, Roll-Off Boxes, and Compactors
- Container Sizes:** 32-, and 96-gallon Carts (or comparable size approved by the City);  
2-, 3-, cubic yard Bins; 3 cubic yard Split-Bins (on a case-by-case basis); and  
  
15-, 30-, and 40- cubic yard Roll-Off Boxes; or,  
Customer Owned Compactors  
As requested by Customer.
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer;
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises.
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall make contact with each and every Commercial Customer to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer is exempted from Recyclable Materials services by the City or has demonstrated to the City that it is Diverting Recyclable Materials through subscription with another City-approved hauler, or other City-approved method.
- Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).
- Contractor may refuse to Collect a Recyclable Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

## EXHIBIT B3 COMMERCIAL SERVICES

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### 2. Organic Materials Collection

Contractor shall Collect Organic Materials placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Organic Materials Collection services shall be provided to Commercial Customers in accordance with the approved Rate schedule. Nothing in this Section of Exhibit B3 shall prevent other Persons from also providing similar services to businesses in the City, and charging for such service, provided that such Persons maintain a City-issued permit granting such right, in accordance with the City's Municipal Code.

- Containers:** Carts, Bins, Compactors
- Container Sizes:** 32-, and 64- gallon Carts (or comparable size approved by the City);  
2- cubic yard Bins, 20-, 30-, and 40-cubic yard Roll-Off Boxes and,  
Customer-owned Compactors  
As requested by Customer.
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer. Restaurants are required to have a minimum Service Level with a frequency per the City's Municipal Code.
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises.
- Acceptable Materials:** Organic Materials (including Yard Trimmings and Food Scraps)
- Prohibited Materials:** Recyclable Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service
- Other Requirements:** Contractor shall make contact with each and every Commercial Customer to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer is exempted from Organic Materials services by the City or has demonstrated to the City that it is Diverting Organic Materials through subscription with another City-approved hauler, or other City-approved method.
- Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).
- Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.10 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address and material type of the Container in question.

## EXHIBIT B3 COMMERCIAL SERVICES

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### 3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal. Solid Waste Collection services shall be provided to Commercial Customers in accordance with the approved Rate schedule.

- Containers:** Carts, Bins, Roll-Off Boxes, Compactors.
- Container Sizes:** 96-gallon Carts (or comparable size approved by the City);  
2-, 3-, 4-, 5-, and 6- cubic yard Bins; 3 cubic yard Split-Bins (offered on a case-by-case basis);  
3 -cubic yard Bin Compactors, and,  
15-, 30-, and 40- cubic yard Roll-Off Boxes; or  
Customer Owned Compactors.  
As requested by Customer.
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer. Restaurants are required to have a minimum Service Level with a frequency per the City's Municipal Code.
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises.
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall make contact with each and every Commercial Customer to determine appropriate Container sizes and service frequency.  
  
Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

### 4. Scout Vehicles

Upon Customer request and approval by the City Manager, Contractor shall provide scout service in accordance the approved Rate schedule, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection, or Collecting directly from Container storage location, or retrieve a Container when operationally required in order to safely position the Container for Collection. In the event of a dispute between Contractor and Customer as to whether scout service will be used, the City Manager will make the final determination.

Customers requiring Bin pushout service and scout service shall only be charged for scout service in accordance with the approved Rate schedule.

## **EXHIBIT B3 COMMERCIAL SERVICES**

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If Contractor must place a Container in the public right-of-way to facilitate Collection, Contractor shall not permit the Container to remain in the public right-of-way over one (1) hour. If the Container is stored under a chute for Collection, the Container must be serviced and returned immediately.

Any changes to the Customer scout service list shall be approved by City prior to Contractor adding or removing this service for any Customer.

### **5. Bin Pushout Service**

Upon Customer request, Contractor shall provide Bin pushout service, whereby Contractor will move Containers manually to facilitate Collection. The Contractor may charge the pushout Rates included in the approved Rate schedule. For Containers in Bin enclosures, the measurement of distance shall be from location of the Bin once removed from the enclosure to the point of Collection. In the event of a dispute between Contractor and Customer as to whether pushout service will be used, the City Manager will make the final determination. If a Bin pushout fee is charged, then a scout service fee shall not be charged.

### **6. Temporary Bin Service**

Contractor shall provide exclusive temporary Bin service to Customers upon request for Collection of Solid Waste, Recyclable Materials, and Organic Materials. Contractor must deliver a temporary Bin to a Customer by the following Business Day (excluding Saturday, Sunday, or Holidays), if requested by 12:00 noon; otherwise, delivery shall be no later than the second day. Rates for temporary Bin service are listed separately in the approved Rate schedule.

**EXHIBIT B4:**  
**CITY AND COMMUNITY SERVICES AND DATA**

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## **EXHIBIT B4**

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#### **1. Commercial Customer Services to City Facilities**

Contractor shall Collect Recyclable Materials, Organic Materials, and Solid Waste, from City facilities in the same manner as those services are provided to Commercial Customers and shall provide designated personnel in accordance with Section 5.7.D of this Agreement. Contractor shall provide service to all existing City facilities identified in Exhibit B4 as well as any future City facilities established after the Effective Date. Contractor shall provide these services at no additional cost to the City. City facility service as described by this Section shall include unlimited Roll-Off Box Collection service, and periodic Bulky Item Collection. Contractor shall deliver Roll-Off Boxes within twenty-four (24) hours of City request. Contractor shall Collect, empty, and return Roll-Off Boxes within twenty-four (24) hours of City request. Contractor shall remove and not return Roll-Off-Boxes within twenty-four (24) hour of City request.

#### **2. Emergency Services**

Contractor shall provide emergency services (i.e., special Collections, Transport, Processing, and Disposal) at the request of the City Manager in the event of major accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City Manager or as soon thereafter as is reasonably practical in light of the circumstances. For any services which exceed the scope of services under this Agreement, Contractor shall be entitled to compensation at the emergency service Rates approved under this Agreement. The City shall have discretion in the method of such compensation between direct payments by the City and allowing such costs to be considered in the adjustment of Rates for the following Rate Period.

#### **3. Shredding Event(s)**

Contractor shall provide an on-site mobile shredding service for use by City residents (a "Shredding Event") one (1) time per calendar year at no additional charge. The Shredding Event shall be provided at a date, time, and location designated and approved by the City Manager, in their reasonable discretion, and should be for a minimum of three (3) hours in duration. In the event inclement weather prevents a Shredding Event from occurring, Contractor shall reschedule the Shredding Event to a date, time and location designated and approved by the City Manager. The Shredding Event shall be conducted at Contractor's sole cost and expense, utilizing equipment, personnel, and methods appropriate for such event, as approved by the City Manager. Prior to each Shredding Event, Contractor shall coordinate with City staff and/or public safety personnel to make arrangements for safe, convenient, and effective access to and participation by City residents in the Shredding Event and shall procure all necessary insurance coverage. Each Shredding Event shall be designed to accommodate up to a maximum of five (5) "Bankers" boxes of paper or other media suitable for shredding from each Residential and Multi-Family Premises Customer within the City that is participating in the Shredding Event. Residents participating in the Shredding Event must be able to visually observe the materials they delivered to the Shredding Event. Contractor shall publicize each Shredding Event through methods, and using materials, approved by the City Manager, at no cost to the City.

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### **CITY AND COMMUNITY SERVICES AND DATA**

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#### **4. Procurement of Organic Waste Products**

- A. General.** Contractor shall assist the City to procure sufficient California derived Compost, Mulch, and/or Renewable Natural Gas to meet the City's requirement for recovered Organic Waste products of 0.08 Tons per capita per year as specified in SB 1383. Contractor shall perform the following activities:
- 1. Bulk Compost and/or Mulch for City Use.** If requested by City, Contractor shall provide to the City bulk Compost, Mulch, or both to assist the City achieve the City's recovered Organic Waste product purchasing requirements of SB 1383. Based on estimates generated using the CalRecycle modeling tools, the City may achieve its procurement goal by procuring approximately eight thousand one hundred fifty (8,150) Tons of Compost or fourteen thousand (14,000) Tons of Mulch. City will notify Contractor as to the City's needs for delivery of finished Compost, Mulch, or both, throughout each Calendar Year. Contractor shall deliver Compost, Mulch, or both, within five (5) Business Days of a request of the City Manager to any accessible location within City Limits. The City will specify the material type (i.e., Compost, Mulch, or both) to be provided and the quality specifications of the selected material type for any given application, even if that requires Contractor to procure such material from a third party in order to provide it to the City. Contractor shall be entitled to a Rate adjustment to compensate Contractor for its estimated actual costs of providing Compost and/or Mulch and shall provide City with copies of supporting documentation such as invoices from Compost/Mulch producers for the purchase of Compost/Mulch, and Transportation invoices from providers that deliver the Compost/Mulch. City and Contractor shall meet and confer at least ninety (90) days prior to the start of each contract year that begins July 1, to confirm the amounts of Compost/Mulch to be provided during the period from July 1 to June 30 of each year and the Rate adjustment, if any, to be implemented July 1. Any adjustments to the amount of Mulch/Compost requested in subsequent years shall be reflected as an increase or decrease to the Rate adjustment. For example, if City and Contractor initially agreed to a Rate adjustment of 0.25% for a certain quantity of Compost in a particular year, and if the quantity of Compost is subsequently reduced by 50% in a future year, then the Rates would be reduced by 50% of 0.25% which equals 0.125%. As an alternative to compensation for Compost and Mulch through Rate adjustments, City may elect to remit compensation directly to Contractor without a Rate adjustment through payment of monthly invoices to be submitted by the Contractor.
  - 2. Bulk Compost and/or Mulch for Private Uses.** If the City is unable to use the full amount of Compost, Mulch, or both, acquired under Exhibit B4, Section 4.A.1 above, Contractor shall use best efforts to arrange the legal donation of the remainder of the City's Compost/Mulch to other productive uses at no additional cost to the City or Customers.
  - 3. Compost/Mulch Give-Away Events.** Contractor shall distribute an annual total of at least twenty (20) Tons of Compost and/or Mulch to City residents at no additional cost to the City or Customers at one (1) public Compost/Mulch give-away event per Agreement Year (such that Contractor shall provide at least five hundred (500) bags per event). The location, date, and time of such events shall be mutually agreed upon by Contractor and the City Manager and may be held in conjunction with other City-approved events. Contractor shall deliver the loose or bagged Compost/Mulch to the agreed-upon event location at no cost to City. Contractor shall provide at least one (1) attendant for at least six (6) hours per event. Any

## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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Compost and or Mulch given away to the community through this program shall count towards the Contractor's obligations to provide the City with the amount of Organic Waste products required under SB 1383.

- 4. Use of RNG.** Contractor shall use reasonable business efforts to use California-derived Renewable Natural Gas in Collection vehicles.
- B. SB 1383 Procurement.** Contractor agrees that all RNG, Compost, Mulch, or both, provided through this Agreement shall comply with the municipal procurement requirements of SB 1383, including being generated from California Organic Waste Products, as defined by SB 1383 for each applicable material type.

Contractor shall develop a plan to assist the City in meeting per capita California Organic Waste Products procurement requirements of SB 1383.

- C. Contractor Warranty of Recovered Organic Waste Products.** Contractor shall provide assurance through the execution of a liability waiver stating that all Organic Waste products provided by the Contractor and used within the City are free from pathogens and inorganic waste material that may be harmful to the health and welfare of the City and its constituents, and also in accordance with standards of CalRecycle and subject to the United States Composting Council guidelines requiring testing demonstrating that fecal coliform levels of <1000 MPN/gram of dry Compost or Salmonella < 3MPN/ 4 grams of dry Compost. The Contractor shall indemnify and hold harmless the City against any claims arising from contaminated recovered Organic Waste products provided by the Contractor as set forth in Section 9.1.

#### **5. News Media Relations**

Contractor shall notify the City Manager by e-mail of all requests for news media interviews related to the Collection services program within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, Contractor will discuss Contractor's proposed response with the City Manager.

Copies of draft news releases or proposed articles related to the provision of Collection services under this Agreement shall be submitted to City for prior review and approval at least five (5) Business Days in advance of provision to such Persons, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) Business Days after publication.

#### **6. Waste Generation, Characterization, and Pilot Studies.**

Contractor acknowledges that City, CalRecycle, or other governmental agencies may wish to perform generation and characterization studies periodically with respect to materials covered under this Agreement. Contractor agrees to participate and cooperate with City and its agents and to perform

## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, Diverted, or otherwise Processed.

Contractor that acknowledges that the County, in coordination with the City, is required by SB 1383 to conduct Organic Waste and Edible Food capacity planning studies. The Contractor shall provide information to the City as needed for the City's participation in such capacity planning studies. This information and/or participation may include, but is not limited to, conducting or supporting waste characterization studies; providing information regarding existing and potential new or expanded capacity in the Contractor's operations for the Collection, Transport, or Processing of Recyclable and Organic Materials; and any other information deemed necessary by the City or County for purposes of the study. The Contractor shall respond to any request for information from the City within thirty (30) days, unless another timeframe is otherwise specified or authorized by the City.

Contractor acknowledges that the City may, wish to conduct and/or participate in pilot studies related to the Customers and materials that are the subject of this Agreement. If City requires Contractor to participate in any such a pilot study, Contractor and City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation, if any, that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by other Persons for such purposes.

#### **8. City Cleanup Programs**

A. **Abandoned Waste Collection and Weekly Alley Cleanups.** Contractor shall provide Abandoned Waste Collection and litter pickup at locations reported by Contractor's route supervisors and drivers, and/or the City within 24 hours of notification. Upon receipt of a call for service from City made pursuant to this Section, Republic shall advise City within four (4) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within 72 hours. Additionally, in the event of a windstorm or other situations which require cleanup, crews will be dispatched as requested by City staff. Contractor shall provide two (2) employees in a "front loader" vehicle to canvass the City neighborhoods in order to remove Abandoned Waste left in alleyways or throughout the City (initial list of locations included later in this Exhibit B4) at no additional charge as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within City.

Republic agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property Owner by City through abatement liens or otherwise, Republic will provide billing information sufficient for City to include it in its liens, and Republic will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property Owner.

B. **Resource Allocation for Abandoned Waste Collection and Alley Cleanups.** The Contractor will commit a minimum of one (1) Solid Waste Collection vehicle and a two (2) Person crew six (6) days per week to provide the services in the Abandoned Waste Collection and Weekly Alley Cleanups described above with a minimum of sixty (60) Collection hours per week. The sixty (60) hours per week may be allocated between the Abandoned Waste Collection and Weekly Alley Cleanups as directed by the City.

## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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- C. **Response to Requests From City's Work Order Application.** Upon the Effective Date of this Agreement, Contractor shall work with the City's information technology personnel to ensure that Contractor is able to receive and respond to requests for service via the City's Work Order Application. Contractor shall respond to service requests received via the City's Work Order Application within forty-eight (48) hours of receipt.

#### **9. Large Venue and Event Assistance, Event Recycling**

Contractor shall assist City planners of Large Venue events with reporting and planning needs to provide Recycling and Organics Materials Diversion as may be useful in meeting the requirements of AB 2176 and SB 1383, and in lowering Disposal quantities generated at such events at no additional charge.

#### **10. Neighborhood Cleanups**

Contractor shall supply up to fifty (50) forty (40) yard Roll-Off Boxes and Containers in additional sizes per Rate Period for the Collection of Solid Waste, Recyclable Materials, and Organic Waste for City-sponsored neighborhood cleanups at no additional charge to City or Customers. Contractor will provide the necessary staffing to operate the neighborhood cleanup events.

Dates and locations of events shall be determined and approved by City. City staff shall inform Contractor of the date and location for each event.

All material Collected must be Transferred, Processed, and/or Disposed in accordance with SB 1383.

#### **11. City Sponsored Events**

Contractor shall provide Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Waste Collection and Disposal/Processing service for City-sponsored events including but not limited to the City-sponsored events included in this Exhibit B4 at no additional charge to City or ratepayers. This shall include providing Discarded Material Containers (Carts, Bins, Roll-Off Boxes, and Cardboard waste boxes with liners) to Collect and Dispose of, or Process, all Solid Waste. Contractor shall provide Collection Containers for the Collection of Source Separated Recyclable Materials, and Source Separated Organic Waste.

#### **12. Bus Stop Public Litter Container Collection**

Contractor shall service a minimum of thirty-three (33) public litter Containers two (2) times weekly located at bus stops throughout the City. Public litter Containers are provided by the City. Contractor shall provide any liners or other items needed to continue service. If Service Levels are not sufficient to ensure Containers do not become full, Service Levels shall be increased at no additional cost to the City. If additional public litter Containers at bus stops are added, Contractor will service such Containers at no additional cost to the City.

## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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#### **14. Annual Contribution to Community Programs**

As further consideration for the rights granted to Republic herein, Republic shall contribute one hundred thousand dollars (\$100,000) each year during the term hereof for community uses (the "Community Uses Contribution"), to be allocated as follows: (1) Republic shall make a payment of fifty thousand dollars (\$50,000) to City to use for community programs of any nature as City deems appropriate, including, but not be limited to, public Holiday celebrations, public concerts, youth activities, senior citizen programs and continuing education classes; (2) Republic shall make a payment of twenty-five thousand dollars (\$25,000) to the Garden Grove Community Foundation; and (3) Republic shall donate twenty five thousand dollars (\$25,000) by cash contribution or in-kind services to charity in the City as determined by Republic. Such payments to City and the Garden Grove Community Foundation shall be due on or before July 1 of each year, with the first payment due on or before thirty (30) days following the Effective Date.

#### **15. Facility Tours**

Contractor shall offer and promote to the community and Garden Grove K-12 schools free educational tours of the Contractor's local facilities.

#### **16. Student Scholarships**

Contractor shall work with the City to select seven (7) City students per Rate Period to receive a one-thousand-dollar (\$1,000) scholarship from the Contractor. Selected students must be 18 years of age or older.

#### **17. Eco-Job Fair**

Contractor shall host six (6) Eco Job-Fairs per Rate Period for City middle school and high school students to provide information on career opportunities in the Solid Waste industry. Contractor shall provide an environmental curriculum program to attendees.

#### **18. Environmental Ambassador Program**

Contractor must establish an annual recognition program for Commercial Businesses in the City. The Environmental Ambassador Program will be a voluntary program managed entirely by Contractor, and certification may include refuse, water, and energy conservation, pollution prevention, and reduction of toxic substances in the workplace. Businesses certified will be honored by Contractor at a City Council Meeting.

#### **19. Battery Recycling Program**

Contractor shall provide and empty as many battery Recycling containers as requested by City, at City facilities for no additional cost. Contractor shall Collect and replace containers upon City's request for proper Recycling of batteries.

## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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#### **20. Edible Food Recovery Programs**

- A. **Food Recovery Compliance Reviews.** Commencing July 1, 2022 and at least annually thereafter, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its Food Recovery compliance reviews to include inspections of Tier Two Commercial Edible Food Generators. Contractor will provide to the City all of the necessary recordkeeping requirements and reports to comply with SB 1383. Contractor will utilize a third party, such as Abound Food Care, to meet the requirements of the Food Recovery Compliance reviews.
- B. **Food Recovery Assistance.**
1. Contractor shall assist the City in identification of all Commercial Customers that meet the definition of Tier One and Tier Two Commercial Edible Food Generators and provide a list of such Customers to the City, which shall include: Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business (as it relates to the Tier One and Tier Two Commercial Edible Food Generator definitions).
  2. At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:
    - Information about the Contractor's and/or City's Edible Food Recovery program;
    - Information about the Commercial Edible Food Generator requirements under 14 CCR Chapter 12 Article 10;
    - Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
    - Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
  3. The Contractor may provide the education information required by this section by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.
  4. Contractor shall cooperate with the implementation, expansion, or operation of Food Recovery efforts in the City, Food Recovery Organizations, and/or Food Recovery Services.
  5. Contractor shall provide Collection and Processing of Organic Materials at no additional cost to Food Recovery Organizations.

## EXHIBIT B4 CITY AND COMMUNITY SERVICES AND DATA

### Current City Facilities

Row	City Facility	Waste Type	# Containers	Container Size (Yds)	PU's/WK
1	Buena Clinton Family Resource Center 12661 Sunswept Avenue	MSW	1	3	1
2	City Hall 11222 Acacia Parkway	Recycling (Rec)	2	3	1
3	CMC / Senior Center 11300 Stanford Avenue	MSW	2	3	3
4	Courtyard Center 12732 Main Street	MSW	1	3	3
5	Fire Station 2 11805 Gilbert Street	MSW	1	3	1
6	Fire Station 3 12132 Trask Avenue	MSW	1	3	1
7	Fire Station 4 12191 Valley View Street	MSW	1	3	1
8	Fire Station 5 12751 Western Avenue	MSW	1	3	1
9	Fire Station 6 12111 Chapman Avenue	MSW	2	0.48	1
10	Fire Station 7 14162 Forsyth Lane	MSW	1	3	1
		MSW	2	0.48	1
		Organics (org)	1	0.48	1
11	Garden Grove Park 9301 Westminster Avenue	MSW	10	3	2
12	Gem Theater 12852 Main Street	MSW	1	3	2
13	Municipal Service Center 13802 Newhope Street		3	15	On Call
		Rec	2	0.32	1
		Org - GW	2	40	On Call
		MSW	2	40	On Call
		Org - GW	1	40	On Call
		MSW - Tires	2	30	On Call
		MSW	5	15	On Call
		MSW	3	3	1
		BS	30	0.03	On Call
		Rec	1	3	1
			1	30	On Call
14	Police Department 11301 Acacia Parkway	MSW	2	3	3
		MSW	1	3	2
		Rec	3	3	1



## **EXHIBIT B4**

### **CITY AND COMMUNITY SERVICES AND DATA**

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#### **Initial Alley/Illegal Dumping Hotspots**

This is an initial list of areas to be monitored by Contractor during the Abandoned Item and Alley Sweeps. City retains the right to update this list on an ongoing basis to remove or add locations for Contractor to monitor. Addresses that are not alleys are indicated as such.

1. 13891 Roxey Dr. - North of the address
2. 12611 Trask Ave. - North of the address
3. 13371 Palm St.- North of the address
4. 13951 Rosita Pl. -Across from the address (not an alley)
5. 13382 Lampson Ave. - South of the address
6. 12171 Chapman Ave. - North of the address
7. 12231 Anzio St. - South of the address (not an alley)
8. 10072 Traylor Way. - South of the address
9. 10432 Westminster Ave. - South of the address
10. 14451 Ward St. - West and South of the address
11. 10722 Kern Ave. - South of the address
12. 11121 Dino St.-North of the address (not an alley)
13. 9511 Maureen Dr. - North of the address
14. 9542 Maureen Dr. - South of the address
15. 11151 Endry St. - West of the address
16. 11071 Gilbert St. - West of the address
17. 11112 Magnolia St.- East of the address
18. 8861 Anthony Dr. - North of the address
19. 13711 Yoak St. - West of the address
20. 12751 Monarch St. - East of the address (not an alley)
21. 11821 Western Ave. - West of the address (not an alley)
22. 12777 Knott St. – West of address (not an alley)
23. 12031 Santa Rosalia St. -East of the address
24. 13161 Balboa Ave. - North of the address
25. 12072 Laguna St. - East of the address
26. 13162 Newport Ave. - North of the address
27. 11532 Stuart Dr. - South of the address
28. 11851 Stuart Dr. - North of the address
29. 8152 Larson Ave. - North of the address (not an alley)

## EXHIBIT B4 CITY AND COMMUNITY SERVICES AND DATA

### Current Bus Stop Public Litter Containers

No.	Cross Streets	Container Type
1	SE KATELLA & MAGNOLIA	Bus Stop
2	SW BROOKHURST & CHAPMAN	Bus Stop
3	NE BROOKHURST & WESTMINSTER - NB Bus Stop	Bus Stop
4	SW CHAPMAN & EUCLID	Bus Stop
5	SW BROOKHURST ST & WESTMINSTER - SB Bus Stop	Bus Stop
6	GARDEN GROVE BLVD & S LEWIS	Bus Stop
7	MAGNOLIA ST & WESTMINSTER	Bus Stop
8	NW NUTWOOD & GARDEN GROVE	Bus Stop
9	SW GARDEN GROVE BLVD & MAGNOLIA	Bus Stop
10	MAGNOLIA ST & TRASK AVE	Bus Stop
11	MAGNOLIA ST & CHAPMAN AVE	Bus Stop
12	NW MAGNOLIA ST & GARDEN GROVE - SB Bus Stop	Bus Stop
13	NW MAGNOLIA & GARDEN GROVE- WB Bus Stop	Bus Stop
14	ROBYN CT / TRASK AVE	Bus Stop
15	EUCLID & STANFORD	Bus Stop
16	WESTMINSTER & W CLINTON	Bus Stop
17	E WESTMINSTER & W BUENA	Bus Stop
18	NE Taft / Westminster - WB Westminster	Bus Stop
19	NW Westminster / Brookhurst - WB Bus Stop	Bus Stop
20	SE Chapman / Knott - EB Bus Stop	Bus Stop
21	NW Dale / Chapman - WB Bus Stop	Bus Stop
22	SW Belgrave / Valley View - South of Belgrave. Bus stop ID 2494	Bus Stop
23	NE Gilbert / Chapman - WB Bus Stop	Bus Stop
24	SW Lampson / Euclid - SB Bus Stop	Bus Stop
25	NE Buaro / Chapman - WB Bus Stop	Bus Stop
26	SE Brookhurst / GG Blvd - EB Bus Stop	Bus Stop
27	NE Euclid / Westminster - NB Bus Stop	Bus Stop
28	NE Euclid / Trask - NB Bus Stop	Bus Stop
29	NE Buaro / Chapman Bus Stop	Bus Stop
30	SE Brookhurst / GG Blvd.	Bus Stop
31	NE Euclid / Westminster	Bus Stop
32	NE Euclid / Trask	Bus Stop
33	SW Trask / Harbor - SB Bus Stop	Bus Stop

## EXHIBIT B4 CITY AND COMMUNITY SERVICES AND DATA

### City Events List

Event Name	Attendance	Frequency	Resources Needed from Republic	Notes
Six (6) Summer Concerts	Varies - Approx. 1-2K people	Annually (June/July/Aug)	<p><b>Dumpsters</b> - The City will need two (2) 3-Yard Dumpsters for Organics and Recyclables for each summer concert event. Republic to drop off at Garden Grove Park.</p> <p><b>Cardboard Trash Cans</b> - The City will need twelve (12) Cardboard trash cans; six (6) for Organics and six (6) for Recyclables for each of these events – for a minimum of seventy-two (72) Cardboard trash cans for the six (6) summer concert events.</p>	<p>(1) The number of concerts has varied due to COVID (e.g., City held only 4 in 2021). Number of concerts may vary in future.</p> <p>(2) Will Republic be able to label the Cardboard trash cans for Organics and Recyclables, so that public will know how to sort trash.</p>
Winter in the Grove	5-7K people	Annually (December)	<p><b>Dumpsters</b> - The City will need two (2) 3-Yard Dumpsters for Organics and Recyclables for this event. Republic to drop off at Garden Village Green Park.</p> <p><b>Cardboard Trash Cans</b> - The City will need forty (40) Cardboard trash cans; twenty (20) for Organics and twenty (20) for Recyclables for this annual event.</p>	
Open Streets	10K people	Varies - Next: April 2, 2022	<p><b>Dumpsters</b> - The City will need three (3) 3-Yard Dumpsters for Refuse, Organics, and Recyclables for this event. Dropoff location to be determined.</p> <p><b>Cardboard Trash Cans</b> - Quantity to be determined</p>	The City's goal is to host this event annually, but frequency may change.

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**EXHIBIT C:**  
**PUBLIC EDUCATION AND OUTREACH REQUIREMENTS**

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## **EXHIBIT C**

### **PUBLIC EDUCATION AND OUTREACH REQUIREMENTS**

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#### **1. General Administration**

The City has placed the utmost importance on effective public outreach and education in helping residents and businesses fully understand options for, and benefits of, source reduction, reuse, Recycling, and Composting. General provisions for public education and outreach are as follows:

- A. Within thirty (30) days of the Effective Date and by December 15 of each following year during the Term of this Agreement, Contractor shall develop and submit an annual public education plan to promote the programs designed by the City and performed by Contractor under this Agreement. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be distributed, opportunities for expanded partnerships, and a timeline for implementation. The City Manager shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City Manager. Contractor shall meet with the City Manager to present and discuss the plan, review the prior year's activities (including sponsorships and services provided to City-sponsored events) and determine whether community activities and the provision of services to the City reflect the needs of City staff and the City Council. City Manager shall be allowed up to sixty (60) calendar days after receipt to review and request modifications. The City Manager may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City Manager. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities as identified in this Exhibit C. Each Business Day that the plan is late shall count as a single occurrence.
- B. Upon request from the City Manager, City Manager and Contractor's Contract Administrator shall meet at least one (1) time per month to discuss services, outreach, and educational campaigns and request changes or adaptations to the annual public education plan.
- C. Contractor shall distribute instructional information, public education, and promotional materials in advance of, and following, Commencement of new or modified services. This shall entail, at a minimum, distributing program literature to all Customers at the Commencement of the Agreement as well as to any new Customer during the Agreement Term. Contractor shall use multiple media sources including print, radio television, electronic/social media, and events to notify Customers of the change in their service provider, if applicable, and to highlight new program offerings. Transition and ongoing sector-specific collateral materials shall be distributed. The Contractor shall submit all draft materials to City Manager for review and approval.
- D. All City facilities shall receive any and all public education and outreach materials and services provided to the Commercial sector. Contractor shall provide all printed public education materials to City offices and facilities to have available for the public that visits those facilities and shall replenish the materials as requested by the City Manager.
- E. City or Contractor may design bill inserts. Bill inserts designed by Contractor shall be provided to the City Manager or their designee a minimum of sixty (60) prior to publication. The City Manager or their designee shall review bill inserts designed by Contractor; and the Contractor shall

## **EXHIBIT C**

### **PUBLIC EDUCATION AND OUTREACH REQUIREMENTS**

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responsible for printing and distributing the billing inserts to all Customers. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information as attachments to Customer invoices. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for billing inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group, if specified. Contractor shall perform this service with no additional requirement for compensation.

- F. Contractor shall develop a website specific to its operations in the City, with a section specific to City programs and Customers, that will be used to post educational materials for download, highlight program successes, and provide Diversion statistics. The Contractor's City specific website shall also include links to relevant web pages of the City's website where further information can be found. Content for the website shall be approved by the City Manager or their designee. Contractor shall review the website at a minimum annually to update information contained on website.

#### **2. Public Education and Outreach Consultant**

In the event that City, in its sole discretion, determines that the Contractor fails to fulfill the public education and outreach requirements contained in this Agreement to the City's satisfaction, or if CalRecycle refers the City to the Jurisdiction Compliance Unit (JCU) for additional enforcement review/action, or if less than ninety percent (90%) of the City's Commercial and Multi-Family Customers subject to the requirements of AB 341 and/or AB 1826 are in compliance with the mandatory requirements for Commercial Recycling and/or Organics by December 31, 2023, the City retains the right to direct Contractor to provide funding for the City to retain a public education and outreach consultant to perform the duties set forth in this Agreement, at no additional cost to the City. The City will notify the Contractor in writing of its intent to procure a public education and outreach consultant. Within thirty (30) days of written notice from the City, Contractor and City shall meet and confer in good faith prior to City retaining a public education and outreach consultant to develop a scope of work, timeline, and projected budget amount for the public education and outreach consultant. Upon one-hundred and twenty (120) days of written notice to the Contractor of the City's intent for to procure a public education and outreach consultant, the Contractor shall provide funds to the City to retain a public education and outreach consultant of the City's choosing. The minimum term of the public education and outreach consultant's contract shall be twelve (12) months and any subsequent contract extensions shall be in increments of twelve (12) months. Upon selection of the public education and outreach consultant by the City, the Contractor shall remit quarterly payments to the City for the cost of the public education and outreach consultant (e.g., if the contract amount were \$100,000, the Contractor would remit quarterly payments to the City of \$25,000 for the term of the engagement). The City will direct the work efforts of the public education and outreach consultant. During the term of the consultant's engagement, the Contractor shall cooperate with the consultant to provide Customer service and operations data to the consultant, implement Recycling and Organics programs at Customer sites as requested by the consultant, and to meet with the City and the consultant periodically to assess program progress. The City and the Contractor shall confer annually to assess the City's outreach/education progress, compliance status, and to determine if the public education and outreach consultant's contract shall be extended by an additional twelve (12) months.



## **EXHIBIT C**

### **PUBLIC EDUCATION AND OUTREACH REQUIREMENTS**

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#### **3. Sector-Specific Activities**

The following tables present the public education and outreach activities to be performed by Contractor each Rate Period as minimum requirements under this Agreement. Each Customer faces unique Discarded Materials management opportunities and challenges; therefore, Contractor shall develop targeted, sector-specific educational materials and perform outreach activities as described for each Customer Type.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | All Sectors

*All printed materials also to be posted to the Contractor's website.*

The following general public education and outreach materials shall each be produced for the benefit of all Customer Types that receive Collection service from the Contractor.

Activity	Description	Distribution/Frequency
Newspaper Advertisement	Distribute a newspaper advertisement that explains all programs that will be offered under the new Agreement. Contractor shall also provide articles on Recycling for local newsletters.	One (1) time at beginning of the Agreement (20-30 days prior to contract start date). Annually, as requested thereafter.
Direct Community Outreach	Republic shall conduct school assemblies and promote Recycling through presentations and educational materials to the Chamber of Commerce, homeowner's associations, construction contractors and other civic groups.	Annually
Website	Contractor to prepare a section of its website where it will present Customers with educational and Diversion programs, upcoming outreach events, services, and resources specific to City. Website must include Contractor Customer service contact, material on source reduction of household Solid Waste and relevant legislative requirements.	Updated as mutually agreed
Corrective Action Notices – "Contamination Tag"	Produce and distribute a Notice for use in instances where the Customer includes prohibited materials in a Container or fails to properly prepare Containers. This form shall also be printed and made available in Korean and Vietnamese languages.	As needed.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | Single-Family Education and Outreach Activities

*All printed materials also to be posted to the Contractor's website.*

Activity	Description	Distribution/Frequency
Initial Mailing	Produce and Distribute a City-designed initial mailing to Single-Family Customers, which may include content such as explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; regulatory requirements, including SB 1383; and, the Effective Date of the change. Contractor shall include its Holiday schedule and the Residential Recycling and expanded services guide.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Annual Notice	Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; Holiday Collection schedules; Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Organic Materials, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste, U-Waste and E-Waste Collection, and the proper handling and Disposal of such wastes. This brochure shall also be printed and made available in Korean and Vietnamese languages.	One (1) time per year.
Recycling Guide	Produce and Distribute a "Recycling guide" specific to Single-Family Customers. This guide shall include information on Collection methodologies, set out instructions, set out schedule, contact information, and acceptability and necessary preparation of materials for all Single-Family programs described in Exhibit B1. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	Affixed (inside plastic bag, zip-tied to handle) to every Single-Family Recyclable Materials Cart delivered prior to the Commencement Date, and thereafter to all new Customers.  By direct mail annually thereafter to each Single-Family Customer

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Activity	Description	Distribution/Frequency
Neighborhood Group & HOA Visits	Upon City request, visit homeowner associations and other neighborhood groups and associations to promote and explain the Recycling programs included in this Agreement.	At City Manager or Customer request.
Quarterly Newsletter	Not less than four (4) times per year during each Rate Period, Contractor shall be responsible for all costs incurred for the production and mailing of the City's Quarterly Newsletter. The City reserves the right to direct the production of the Quarterly Newsletter to a contractor of the City's choosing. The Quarterly Newsletter will include information on current regulations, and any additional regulations adopted during the Term of this Agreement and any extensions granted by the City. The Contractor shall be required to coordinate distribution via U.S. Mail of the Quarterly Newsletter with a local mailing house, including furnishing Customer mailing addresses.	
Corrective Action Notices	Produce and distribute a Single-Family Customer oriented Non-Collection Notice, and Courtesy Pick-Up Notices for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed.
Seasonal Program Notifications	Provide written notification to all Single-Family Customers advertising holiday tree Collections pursuant to Exhibit B1.5 and any other seasonal or periodic program(s). The notification shall inform Customers of the schedule, acceptable and prohibited materials, and set-out requirements for the program.	At least fourteen (14) calendar days prior to event via direct mail.
Website	Contractor shall prepare a "Single-Family Customer" section of its website where it will present Customers with "how-to" information for participating in Contractor-provided programs, including proper Container setouts, and provide Single-Family Customers with links to click on for additional resources. All other Single-Family educational materials specified in this Section shall be posted on this Section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Single-Family Customers within the City.	At least sixty (60) calendar days prior to Commencement Date.  Updated no less than quarterly.

**EXHIBIT C**  
**PUBLIC EDUCATION & OUTREACH PLAN**

Activity	Description	Distribution/Frequency
Mandatory Recycling and Organics Outreach Activities	Produce and Distribute outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to Mandatory Recycling and Organics including, but not limited to, SB 1383. Can be combined with annual notice requirements and quarterly newsletters.	One (1) time annually

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | Multi-Family Education and Outreach Activities

All printed materials also to be posted to the Contractor's website.

Description	Purpose	Distribution/Frequency
New Programs Mailing	Produce and Distribute an initial mailing to all Multi-Family Dwelling Units within City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; new regulatory requirements, including SB 1383; and, the Effective Date of the change.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail to each Multi-Family Dwelling Units in City.
Annual Notice	Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; Holiday Collection schedules; Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Organic Materials, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste, U-Waste and E-Waste Collection, and the proper handling and Disposal of such wastes. This brochure shall also be printed and made available in Korean and Vietnamese languages.	One (1) time per year.
Recycling Guide	Produce and Distribute a "Recycling Guide" specific to Multi-Family Customers, and updated versions of the guide as needed. This guide shall include information such as Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Multi-Family programs described in Exhibit B2. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail to each Multi-Family Dwelling Units in City.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Technical Assistance: Diversion Opportunity Assessments	Offer Diversion opportunity assessments at least one (1) time annually to each and every Multi-Family Customer to meet with the property manager or Owner of Multi-Family Premises to promote Recyclable and Organic Materials Collection.	Offer in-person meetings to each and every Multi-Family Customer conducted one (1) time per year, plus follow-up meetings with individual Customers, as needed.
Workshops	Offer and respond to requests for on-site meetings and workshops. Contractor shall conduct workshops for Customers (when requested) that will show property managers and residents, in a hands-on interactive format, how to use the Recycling and Organics program and will provide resources for additional information and support.	At Customer's request.
Website	Contractor shall prepare a "Multi-Family Customer" section of its website where it will present "how-to" information for participating in Contractor-provided programs, including proper Container setouts, and provide Multi-Family Customers with links to click on for additional resources. All other Multi-Family educational materials specified in this Exhibit C shall be posted on this section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Multi-Family Customers within the City. The website shall also provide property managers of Multi-Family Premises with an opportunity to request "Diversion opportunity assessments," or additional education materials to provide to tenants.	At least sixty (60) calendar days prior to Commencement Date.  Updated no less than quarterly.
Mandatory Recycling and Organics Outreach Activities	Contractor shall disseminate outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to Mandatory Recycling and Organics including, but not limited to, AB 341, AB 1826, and SB 1383.	One (1) time annually

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Educational Materials for Employees/Tenants	Contractor shall provide Commercial and Multi-Family property managers/Owners with public education materials, required by SB 1383, for their distribution to all employees, contractors, tenants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Multi-Family property managers/Owners may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new tenants before or within fourteen (14) days of occupancy.	One (1) time annually; or more frequently upon Customer request.



## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | Commercial Education and Outreach Activities

*All printed materials also to be posted to the Contractor's website.*

Description	Purpose	Distribution/Frequency
New Programs Mailing	Prepare and distribute an initial mailing to all Commercial Customers within the City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; and, the Effective Date of the change.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Annual Notice	Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; Holiday Collection schedules; Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Organic Materials, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste, U-Waste and E-Waste Collection, and the proper handling and Disposal of such wastes. This brochure shall also be printed and made available in Korean and Vietnamese languages.	One (1) time per year.
Recycling Guide	Contractor shall produce a "Recycling Guide" specific to Commercial Customers and update the guide as needed. This guide shall include information on Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Commercial programs described in Exhibit B3. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail.  Distributed during Diversion opportunity assessments.
"How-to" Flyer: Recyclable Materials	Prepare and distribute a "how-to" brochure explaining the Recycling Materials Collection programs for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial Businesses).	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail.  Distributed during Diversion opportunity assessments.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
"How-to" Flyer: Organic Materials	Prepare and distribute a flyer describing the Organic Materials Collection services available and how to prepare Organic Materials for Collection for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial Businesses).	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail.  Distributed during Diversion opportunity assessments.
Technical Assistance: Diversion Opportunity Waste Assessments	Offer Diversion opportunity assessments at least one (1) time annually to each and every Commercial Customer to promote Recyclable and Organic Materials Collection and replenish Recycling guides and Recycling and Organics posters as needed by each Customer.	Offer one (1) time annually during in-person meetings with each and every Commercial Customer, plus follow-up meetings with individual Customers, as required.
Recycling and Organics Posters	Produce and distribute (during Diversion opportunity assessments) laminated Recycling and Organics posters that provide graphic illustrations of acceptable and prohibited materials within each program.	Distributed during Diversion opportunity assessments.
Quarterly Bill Inserts	Prepare and distribute quarterly bill inserts that creatively inform Commercial Customers about such topics as: cost savings available from source reduction, reuse, and Recycling; tips for overcoming common operational challenges businesses have with Recycling and Organics programs; the environmental benefits of buying Recycled-content products and statistics, trends, and facts about programs performed under this Agreement (e.g., Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into) as appropriate. Contractor's annual public education plan shall define a theme for each quarterly insert.	One (1) time per quarter via direct mail to each Commercial Customer in City.
Corrective Action Notices	Produce a Commercial and Multi-Family Customer oriented corrective action notice for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Mandatory Recycling and Organics Outreach Activities	Contractor shall disseminate outreach materials related to the mandatory nature of Recyclable Materials and Organic Materials Collection services, upon request from City Manager. Such outreach shall be designed to assist the City in complying with the outreach requirements of various Applicable Laws related to the mandatory provision of Recyclable Materials and Organic Materials Collection and Diversion services.	One (1) time annually
Educational Materials for Employees/Tenants	Contractor shall provide Commercial and Multi-Family property managers/Owners with public education materials, required by SB 1383, for their distribution to all employees, contractors, tenants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Commercial Customers may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new tenants before or within fourteen (14) days of occupancy.	One (1) time annually; or more frequently upon Customer request. Can be provided electronically to property or business.
Commercial Edible Food Generator Education	<p>Contractor shall provide Customers that are Commercial Edible Food Generators with the following:</p> <ol style="list-style-type: none"> <li>1. Information about the City's Edible Food Recovery program;</li> <li>2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;</li> <li>3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,</li> <li>4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste</li> </ol>	One (1) time annually

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | Special Events

*All printed materials also to be posted to the Contractor's website as well as links to teacher resources.*

Description	Purpose	Distribution/Frequency
Event Exhibit	Contractor shall staff an exhibit booth and distribute promotional and educational materials at special events. Contractor shall provide visual displays, copies of educational materials (including all guides, flyers, and brochures produced for this Agreement), and Recycling education activities appropriate to a variety of age groups. Display components will be professionally designed and created and shall be scalable to be appropriate for a variety of booth or display configurations. Materials will include those pertaining to the programs provided under this Agreement as well as general information on "green" and/or sustainable behaviors.	All special events listed in Exhibit B4 of this Agreement.  Other events at City Manager's request.

**EXHIBIT D:  
INITIAL MAXIMUM RATES**

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## EXHIBIT D: INITIAL MAXIMUM RATES

Following are the Rates for July 1, 2022 through June 30, 2023:

<u>RESIDENTIAL</u>	Service Component	Disposal Component	Adjusted GG Rate Schedule
Basic Residential Rate for Three Carts 35, 64, or 96 Gallon Option	\$ 21.23	\$ 4.60	\$ 25.83
Extra Refuse Container	\$ 1.99	\$ 4.60	\$ 6.59
Extra Yard Waste Container - Above One	\$ 2.25	-	\$ 2.25
Extra Recycle Container - Above One	\$ 2.25	-	\$ 2.25
Disabled/Low Income Senior 65+ Residential 64 or 96 Gallon Option	\$ 15.46	\$ 4.60	\$ 20.06
Non-Schedule Collection / Call Back	\$ 42.13	-	\$ 42.13
Additional Requests After 3 Pick-Ups/Year	\$ 53.41	-	\$ 53.41
Per Item Charge - After 10 Items	\$ 8.22	-	\$ 8.22
Containers Exchanged in Excess of One time per Year	\$ 45.99	-	\$ 45.99
Container Replacement - Customer Misuse Each	\$ 54.56	-	\$ 54.56
Steam Cleaning of Curbside Carts	\$ 26.92	-	\$ 26.92
Republic Kitchen Pail (Customer Pickup only)	\$ 11.00	-	\$ 11.00
Organic Materials/Recycling Cart Contamination fee (4th and Subsequent event)	\$ 10.77	-	\$ 10.77

## EXHIBIT D: INITIAL MAXIMUM RATES

<b>COMMERCIAL</b>	<b>Service Component</b>	<b>Disposal Component</b>	<b>Adjusted GG Rate Schedule</b>
<b>Barrel Service For Commercial (max 4 Refuse carts)</b>			
96 Gallon Refuse Cart (New Customer) 1x/week	\$ 94.42	\$ 5.58	\$ 100.00
96 Gallon Refuse Cart (Existing Customers Only) 1x/week	\$ 27.71	\$ 5.58	\$ 33.29
<b>96 Gallon Recycling Cart</b>			
96 Gallon Recycling Cart 1x week	\$ 75.00	-	\$ 75.00
96 Gallon Recycling Cart 2x week	\$ 157.50	-	\$ 157.50
96 Gallon Recycling Cart 3x week	\$ 232.50	-	\$ 232.50
<b>Commercial Organic Materials Carts (35 or 64 gallon)</b>			
Serviced 1x per/week	\$ 75.00	-	\$ 75.00
Serviced 2x per/week	\$ 157.50	-	\$ 157.50
Serviced 3x per/week	\$ 232.50	-	\$ 232.50
<b>Commercial Green Waste Carts (35 or 64 gallon)</b>			
Serviced 1x per/week	\$ 75.00	-	\$ 75.00
Serviced 2x per/week	\$ 157.50	-	\$ 157.50
Serviced 3x per/week	\$ 232.50	-	\$ 232.50
<b>Two Yard Recycling Bins</b>			
Serviced 1x per/week	\$ 97.11	-	\$ 97.11
Serviced 2x per/week	\$ 173.43	-	\$ 173.43
Serviced 3x per/week	\$ 249.65	-	\$ 249.65
<b>Three Yard Recycling Bins</b>			
Serviced 1x per/week	\$ 140.49	-	\$ 140.49
Serviced 2x per/week	\$ 260.12	-	\$ 260.12
Serviced 3x per/week	\$ 379.69	-	\$ 379.69
Serviced 4x per/week	\$ 499.26	-	\$ 499.26
Serviced 5x per/week	\$ 618.84	-	\$ 618.84
Serviced 6x per/week	\$ 790.59	-	\$ 790.59
Extra Pick-up			
<b>Two Yard Organic Commercial Bins</b>			
Serviced 1x per/week	\$ 97.11	-	\$ 97.11
Serviced 2x per/week	\$ 173.43	-	\$ 173.43
Serviced 3x per/week	\$ 249.65	-	\$ 249.65



## EXHIBIT D: INITIAL MAXIMUM RATES

COMMERCIAL	Service Component	Disposal Component	Adjusted GG Rate Schedule
<b>Two Yard Commercial Refuse Bins</b>			
Serviced 1x per/week	\$ 178.58	\$ 18.27	\$ 196.85
Serviced 2x per/week	\$ 276.61	\$ 36.54	\$ 313.15
Serviced 3x per/week	\$ 374.59	\$ 54.82	\$ 429.41
Serviced 4x per/week	\$ 472.63	\$ 73.09	\$ 545.72
Serviced 5x per/week	\$ 570.62	\$ 91.36	\$ 661.98
Serviced 6x per/week	\$ 668.63	\$ 109.63	\$ 778.26
1st Extra Bin Pick-up	\$ 83.16	\$ 4.22	\$ 87.38
Additional Bins @ Same Time	\$ 44.53	\$ 4.22	\$ 48.75
<b>Three Yard Commercial Refuse Bins</b>			
Serviced 1x per/week	\$ 179.57	\$ 27.41	\$ 206.98
Serviced 2x per/week	\$ 274.29	\$ 54.82	\$ 329.11
Serviced 3x per/week	\$ 369.05	\$ 82.23	\$ 451.28
Serviced 4x per/week	\$ 463.73	\$ 109.63	\$ 573.36
Serviced 5x per/week	\$ 558.51	\$ 137.04	\$ 695.55
Serviced 6x per/week	\$ 653.26	\$ 164.45	\$ 817.71
1st Extra Bin Pick-up	\$ 85.61	\$ 6.32	\$ 91.93
Additional Bins @ Same Time	\$ 44.94	\$ 6.32	\$ 51.26
<b>Three Yard Mini-Packer Bins</b>			
Serviced 1x per/week	\$ 240.89	\$ 82.24	\$ 323.13
Serviced 2x per/week	\$ 417.45	\$ 164.47	\$ 581.92
Serviced 3x per/week	\$ 594.05	\$ 246.71	\$ 840.76
Serviced 4x per/week	\$ 770.58	\$ 328.94	\$ 1,099.52
Serviced 5x per/week	\$ 947.18	\$ 411.18	\$ 1,358.36
Serviced 6x per/week	\$ 1,123.75	\$ 493.42	\$ 1,617.17
Extra Pick-up	\$ 128.86	\$ 18.97	\$ 147.83
Additional Bins @ Same Time	\$ 128.86	\$ 18.97	\$ 147.83
<b>Four Yard Commercial Refuse Bins</b>			
Serviced 1x per/week	\$ 201.03	\$ 36.56	\$ 237.59
Serviced 2x per/week	\$ 317.58	\$ 73.10	\$ 390.68
Serviced 3x per/week	\$ 434.10	\$ 109.66	\$ 543.76
Serviced 4x per/week	\$ 550.71	\$ 146.20	\$ 696.91
Serviced 5x per/week	\$ 667.21	\$ 182.76	\$ 849.97
Serviced 6x per/week	\$ 783.81	\$ 219.30	\$ 1,003.11
Extra Pick-up	\$ 99.25	\$ 8.44	\$ 107.69
Additional Bins @ Same Time	\$ 49.96	\$ 8.96	\$ 58.92
<b>Six Yard Commercial Refuse Bins</b>			
Serviced 1x per/week	\$ 203.24	\$ 54.83	\$ 258.07
Serviced 2x per/week	\$ 300.44	\$ 109.66	\$ 410.10
Serviced 3x per/week	\$ 397.72	\$ 164.48	\$ 562.20
Serviced 4x per/week	\$ 494.91	\$ 219.30	\$ 714.21
Serviced 5x per/week	\$ 592.13	\$ 274.13	\$ 866.26
Serviced 6x per/week	\$ 689.32	\$ 328.96	\$ 1,018.28
Extra Pick-up	\$ 102.08	\$ 12.65	\$ 114.73
Additional Bins @ Same Time	\$ 50.53	\$ 13.44	\$ 63.97
<b>Three Yard Temp. Construction Bins</b>			
Serviced 1x per/week	\$ 201.38	\$ 27.41	\$ 228.79
Serviced 2x per/week	\$ 291.65	\$ 54.83	\$ 346.48
Serviced 3x per/week	\$ 381.99	\$ 82.24	\$ 464.23
Serviced 4x per/week	\$ 472.23	\$ 109.66	\$ 581.89
Serviced 5x per/week	\$ 562.63	\$ 137.06	\$ 699.69
Serviced 6x per/week	\$ 652.90	\$ 164.48	\$ 817.38
Extra Pick-up	\$ 116.77	\$ 6.32	\$ 123.09

## EXHIBIT D: INITIAL MAXIMUM RATES

COMMERCIAL	Service Component	Disposal Component	Adjusted GG Rate Schedule
<u>Pull-out service</u>			
Serviced 1x per/week	\$ 70.16	\$ -	\$ 70.16
Serviced 2x per/week	\$ 140.29	\$ -	\$ 140.29
Serviced 3x per/week	\$ 210.44	\$ -	\$ 210.44
Serviced 4x per/week	\$ 280.62	\$ -	\$ 280.62
Serviced 5x per/week	\$ 350.76	\$ -	\$ 350.76
Serviced 6x per/week	\$ 420.89	\$ -	\$ 420.89
Extra Pick-up	\$ 70.16	\$ -	\$ 70.16
Additional Bins @ Same Time	\$ 70.16	\$ -	\$ 70.16
<u>Other Special Services</u>			
Overage Fee per Occurrence	\$ 47.98	\$ -	\$ 47.98
Any Bin Size Exchange - In Excess of 1 p/Yr.	\$ 99.08	\$ -	\$ 99.08
Special Access Required - Key or Code	\$ 13.21	\$ -	\$ 13.21
Relocation Fee	\$ 70.61	\$ -	\$ 70.61
<u>Contamination Fees (per Occurrence)</u>			
Organic Materials/Recycling Bin Contamination fee	\$ 53.85	\$ -	\$ 53.85
Organic Materials/Recycling Cart Contamination fee	\$ 10.77	\$ -	\$ 10.77
Commercial Bulky Item Pick-Up - Two Items	\$ 60.26	\$ -	\$ 60.26
Additional Item Charge - In Excess of 2 Items	\$ 8.03	\$ -	\$ 8.03
Container Steam Cleaning	\$ 127.24	\$ -	\$ 127.24
Locking Latch Installation	\$ 119.21	\$ -	\$ 119.21
Locking Latch 1x week	\$ 2.64	\$ -	\$ 2.64
Redeliver Bins	\$ 100.44	\$ -	\$ 100.44

## EXHIBIT D: INITIAL MAXIMUM RATES

SPECIAL SERVICES	Service Component	Disposal Component	Adjusted GG Rate Schedule
Roll-Off Containers (all assume 8 tons unless otherwise noted)			
Temporary - Three Day Service			
40 CY Roll-off Box	\$ 488.17	\$ 182.12	\$ 670.29
15 CY Low Boy	\$ 411.49	\$ 258.80	\$ 670.29
40 CY Yard Waste Roll-off	\$ 670.29	\$ -	\$ 670.29
15 CY Low Boy - Clean Inert	\$ 670.29	\$ -	\$ 670.29
Organic Box	\$ 452.60	\$ 523.69	\$ 976.29
3 CY Bin Standard	\$ 88.68	\$ 6.32	\$ 95.00
Extra Days - 3 CY Bin	\$ 7.74	\$ -	\$ 7.74
Additional Dump of Temp 3 CY Bin	\$ 88.68	\$ 6.32	\$ 95.00
3 CY Bin Non-Profit Rate	\$ 83.43	\$ 6.32	\$ 89.75
Permanent - Min. 4 Load per/Month			
40 CY Roll-off Box	\$ 336.00	\$ -	\$ 336.00
40 CY Roll-off Compactor	\$ 403.20	\$ -	\$ 403.20
Organic Box	\$ 336.00	\$ -	\$ 336.00
Organics Compactor Box - 30 CY	\$ 403.20	\$ -	\$ 403.20
Per Ton - Refuse	\$	\$ 82.97	\$ 82.97
Per Ton - Organics	\$	\$ 125.00	\$ 125.00
Over Weight Surcharge Over 8 Tons			
Overweight Refuse	\$	\$ 82.97	\$ 82.97
Overweight Yard Waste	\$	\$ 104.73	\$ 104.73
Overweight Clean Inert	\$	\$ 104.73	\$ 104.73
Overweight Organics	\$	\$ 104.73	\$ 104.73
Relocation Fee	\$ 53.85	\$ -	\$ 53.85
Stand-by Hourly Rate	\$ 95.88	\$ -	\$ 95.88
Trip Charge / Dead Run	\$ 75.85	\$ -	\$ 75.85
Turn-A-Round Surcharge - Packer Units	\$ 12.61	\$ -	\$ 12.61
Saturday Service Per Box	\$ 41.53	\$ -	\$ 41.53
Heavy-duty Truck Service - per Load	\$ 441.32	\$ -	\$ 441.32
Mandatory Signature Required	\$ 6.31	\$ -	\$ 6.31
Temp R/O Extra Day (per Day Charge)	\$ 15.34	\$ -	\$ 15.34
Steam Cleaning R/O or Packer >1 p/Yr.	\$ 126.11	\$ -	\$ 126.11
Storage Container Mo. Rental / Delivery	\$ 104.37	\$ -	\$ 104.37
Storage Container Return (\$1.00/mile) +	\$ 13.21	\$ -	\$ 13.21
Non-Profit Storage Container Mo. Rental / Delivery	\$ 64.78	\$ -	\$ 64.78
Tilt Hopper Monthly Rental	\$ 49.18	\$ -	\$ 49.18
Three (3) Yard Bin Monthly Rental	\$ 66.04	\$ -	\$ 66.04
Non-Profit Three (3) Yard Bin Monthly Rental	\$ 38.89	\$ -	\$ 38.89

## EXHIBIT D: INITIAL MAXIMUM RATES

	Service Component	Disposal Component	Adjusted GG Rate Schedule
<b>LEEDS/GREEN BUILDING</b>			
30 CY Mixed Refuse/C&D Debris 65% - Haul	\$ 401.18	\$ 182.12	\$ 583.30
15 CY Mixed Inert 65% - Haul	\$ 397.47	\$ 258.80	\$ 656.27
15 CY Clean Concrete/Inert Clean - Haul	\$ 385.30	-	\$ 385.30
30 CY Clean Wood - Haul	\$ 529.86	-	\$ 529.86
30 CY Clean Drywall	\$ 529.86	-	\$ 529.86
30 CY Metal - Haul	\$ 92.75	-	\$ 92.75
30 CY Cardboard	\$ 148.40	-	\$ 148.40
Over Weight Surcharge Over 8 Tons			
30 CY Mixed Refuse/C&D Debris 65%	-	\$ 47.91	\$ 47.91
15 CY Mixed Inert 65%	-	\$ 47.91	\$ 47.91
15 CY Clean Concrete/Inert	-	\$ 39.26	\$ 39.26
30 CY Clean Wood	-	\$ 39.26	\$ 39.26
30 CY Clean Drywall	-	\$ 39.26	\$ 39.26
<b>Other City Services</b>			
Emergency Services Rate Per Hour (One Crew and One Truck)	\$ 145.00	-	\$ 145.00

**EXHIBIT E:**  
**EXAMPLE RATE ADJUSTMENT FORMULA**

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## EXHIBIT E: EXAMPLE RATE ADJUSTMENT FORMULA

### STEP 1: Calculate the annual average change in GTCI.

Series pulled from:

**CPI for All Urban Consumers (CPI-U)**

**Original Data Value**

Series pulled from: <https://beta.bls.gov/dataViewer/view/timeseries/CUUR0000SEHG02>

Series with Annual Average can be pulled from: <https://www.bls.gov/data/#>

**Series Id:** CUUR0000SEHG02

**Not Seasonally Adjusted**

**Series Title:** Garbage and trash collection in U.S. city average, all urban consumers, not seasonally adjusted

**Area:** U.S. city average

**Item:** Garbage and trash collection

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2012	398.880	400.381	401.692	400.913	401.067	402.793	406.243	406.823	407.594	409.495	410.155	410.416	404.704
2013	411.126	411.805	412.305	413.675	414.511	414.802	416.505	417.760	418.357	419.687	421.427	422.237	416.183
2014	422.440	422.483	423.413	425.393	425.242	425.930	426.562	426.771	427.327	427.995	427.808	428.187	425.796
2015	427.734	429.248	429.235	429.807	431.234	430.813	431.229	432.967	433.843	434.829	436.428	436.996	432.030
2016	437.205	438.296	437.699	437.676	438.317	437.858	438.607	439.358	439.707	440.311	443.343	444.745	439.427
2017	446.266	447.699	446.987	447.129	447.272	448.046	448.328	448.717	449.008	452.196	453.820	453.596	449.089
2018	453.354	454.915	455.230	458.722	462.887	465.041	465.579	470.457	471.026	472.535	486.650	485.935	466.861
2019	475.687	477.474	478.569	479.449	480.865	480.984	482.138	483.987	484.346	486.133	486.485	486.708	481.902
2020	491.003	494.429	495.288	494.432	494.946	496.679	498.564	500.882	501.756	503.315	504.970	508.190	498.705
2021	512.722	517.270	518.505	518.579	516.440	517.202	521.185	524.408	529.934	530.114	529.053	532.538	522.329
2022	533.078	538.313	540.719	542.564	544.546								

### STEP 2: Calculate the increase to the Service and Disposal Components

#### Service Component Calculation (GTCI - CUUR0000SEHG02)\*

498.705	2021 Annual 12 - Month Average ending December 2021
522.329	2022 Annual 12 - Month Average ending December 2022
23.624	Difference
<b>4.74%</b>	Resulting Net Annual Adjustment

#### Disposal Component (Based on Actuals)

\$ 36.09	2021 Orange County Landfill Charge
\$ 38.34	2022 Orange County Landfill Charge
\$ 2.25	Difference
<b>6.23%</b>	Resulting Landfill Adjustment

\*As further described in Section 8.4 of the Agreement, the GTCI Adjustment shall not exceed six percent (6%) for the July 1, 2023 adjustment. Notwithstanding the foregoing, the GTCI Adjustment shall not exceed five percent (5%) in any given year starting with the adjustment effective July 1, 2024 and all years thereafter.

### STEP 3: Apply increases to components as noted in Exhibit D.

#### **Adjustments to Service Fee Components**

The Service Components of each rate shall be adjusted by the change calculated in the average annual index for the 12 months ended December of the most recent calendar year prior to the Adjustment Date and the average annual index for the 12 months ended December of the previous year.

#### **Adjustments to Disposal Fee Components**

The Disposal Components listed in Exhibit D will be increased by the change in the per ton tipping fee at the Orange County Landfill.

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**EXHIBIT F:  
REPORTING REQUIREMENTS**

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## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and objectives.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law.
4. Determine needs for adjustment to programs.
5. Evaluate Customer service and Complaints.
6. Determine Customer compliance with AB 341, SB 1383, and any subsequent State-mandated Recycling requirements.

#### **1. Monthly Report Content**

Monthly reports shall be submitted by Contractor to the City and shall include the following information pertaining to the most recently-completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following Subsections.

##### **A. Tonnage Report.**

1. Tonnage delivered to each Approved Facility by Customer Type, subtotaling and clearly identifying those Tons that are Diverted and those that are Disposed.
2. E-Waste, U-Waste, and Bulky Items Collected by Customer Type.
3. Solid Waste Tonnage Disposed.
4. Recyclable Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
5. Bulky Items and Reusable Materials Tonnage Marketed and Tonnage Disposed from non-Divertible materials and Processing Residue.
6. Monthly Diversion rate by Customer Type and in aggregate for all Customer Types under this Agreement.

**B. Diversion Report.** Contractor shall report the Diversion level for each month and the cumulative year-to-date Diversion Level, where Diversion level shall be calculated as: (Discarded Materials Collected – Solid Waste Collected – Processing Residue Disposed) / Discarded Materials Collected.

**C. Revenue Report.** Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 7.1.

## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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#### **D. Customer Subscription and Collection Report.**

1. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Service Level listed separately by Customer Type and Discarded Material type.
2. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Roll-Off Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
3. List of all Commercial and Multi-Family Customers with Solid Waste service. Such list shall include each such Customer's service address and subscribed Solid Waste, Recyclable Materials, and Organic Materials Service Levels, and other information as required by the Agreement. The list should include all information in one (1) line for each Customer illustrating the Service Level for each Material Type and the total Service Level for all Material Types the Customer has subscribed to.
4. Number of Bulky Item/Reusable Materials Collection events by Customer Type.
5. Number of Customers subscribing to each City approved service exemption by Customer Type; including the total number of de minimis waivers, physical space constraint waivers, and Collection frequency waivers granted in the month in accordance with Section 4.9, including the Customer name and address for each waiver
6. The number of waivers reviewed, and number of reverification inspections performed, by the Contractor pursuant to Section 4.9.B of this Agreement in the month, if any, including a copy of documentation for each waiver review and reverification inspection.
7. List of Commercial Generators with decreased Service Levels, cancellation of service, and new service.

#### **E. City Services Report.**

1. City facility Diversion rate report (i.e., volume of service by Service Level and type received by each City Facility and the percentage of the total Service Levels that are for Diversion services relative to the total).
2. Summary report on the programs offered to City as described in Exhibit B4 focused on when each service was provided, and any issues/concerns identified.

#### **F. Customer Service Report.**

1. Number of events of Discarded Materials being tagged for Non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste).
2. Number of courtesy pick-up Collections summarized by the reason for leaving a Courtesy Pick-Up Notices (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste).

## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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3. List of Customers for which Contractor has performed a courtesy pick-up Collection, including the Customer address, and material type for which the courtesy pick-up Collection was performed.
4. Record of SB 1383 non-compliance Complaints received, including the following information:
  - a. Total number of Complaints received, and total number of Complaints investigated.
  - b. Copies of documentation recorded for each Complaint received, which shall at a minimum include the following information: (i) The Complaint as received; (ii) The name and contact information of the complainant, if the Complaint is not submitted anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the alleged violation; including location(s) and all other relevant facts known to the complainant; (v) Any relevant photographic or documentary evidence submitted to support the allegations in the Complaint; and, (vi) The identity of any witnesses, if known.
  - c. Copies of all Complaint reports submitted to the City, pursuant to Article 6 of this Agreement.
  - d. Documentation of any follow-up inspections and/or outreach, if any, conducted upon City request pursuant to Section 4.7.C of this Agreement, which shall include at a minimum: (i) The date the Contractor investigated the Complaint; (ii) documentation of the findings of the investigation; and (iii) Any photographic or other evidence collected during the investigation.

#### **G. Contamination Monitoring Report.**

1. The number of route reviews conducted pursuant to Section 4.10 of this Agreement.
2. Description of the Contractor's process for determining the level of contamination or Bin overfilling during route reviews. Contractor shall document the contamination and/or overfilling through use of film or digital photography.
3. A record of each inspection and contamination fee assessed, which shall include, at a minimum:
  - a. Name and address of the Customer;
  - b. The date the contaminated Container was observed;
  - c. The staff who conducted the inspection;
  - d. The total number of violations found, and a description of what action was taken for each;
  - e. Copies of all notices to Customers with Prohibited Container Contaminants; and,
  - f. Photographic documentation.
4. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants.

## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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5. Summary report of Courtesy Pick-Up Notices, Non-Collection Notices, and/or Contamination Processing Fee Notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
6. A list of all Customers assessed Contamination Processing fees, pursuant to Section 4.10 of this Agreement, reported separately by Customer Type, and including the Customer name, Customer address, and reason for the assessment of the Contamination Processing Fee; the total number of instances Contamination Processing Fees were assessed in the month; and, the total amount of fees collected in the month.
7. If performed, results of any waste characterization studies conducted pursuant to Exhibit B4, Section 6 of this Agreement.
8. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

## **2. Quarterly Report Content**

### **A. Education and Outreach.**

1. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 4.5 of the Agreement and Exhibit C including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
2. A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
3. For any mass distribution through mailings or bill inserts, provide a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of all electronic media, including the dates posted or sent of: social media posts, e-mail communications, or other electronic messages. A summary report shall be provided for electronic marketing that itemizes each communication and reports performance metrics for each that are relevant to that type of communication (e.g., open and click-through rates for email marketing, engagement numbers for social media).
5. Summary of the results of the Diversion opportunity assessments provided to Customers (reporting Multi-Family separate from Commercial) by identifying the number of Diversion opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of Dwelling Units (for Multi-Family), and the Recyclable Materials, Organic Materials, and Solid Waste Service Level for each complex. Include any Service Level changes resulting from such visits.
6. Summary of the public education materials and activities provided to schools in the month, if any; including results from Diversion opportunity assessments as described in Exhibit C.
7. Dates, times, and group or event names of any site visits, meetings, and events attended in the month.

## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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#### **3. Annual Report Content**

The annual report shall be the final monthly report, including annual totals, summary pages, and a compilation of any materials required by the monthly reports, plus the following additional information.

**A. Summary Assessment.** Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals. Provide recommendations and plans to improve and highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contractor in the State.

#### **B. Collection and Processing Report.**

1. The total Tonnage of Discarded Materials, listed separately by Discarded Material type, removed from homeless encampments and illegal Disposal sites as part of an abatement activity, listing each Collection event separately by date, location, and Tonnage Collected, pursuant to Exhibit B4.
2. A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a landfill, pursuant to Section 4.9.C.2 of the Agreement.
3. Written notification that the Approved Organic Materials Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics, in accordance with Section 4.1.J of the Agreement.

#### **C. Education and Outreach Report.**

1. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
2. The annual public education plan required by Section 4.5 of the Agreement and Exhibit C for the upcoming then-current calendar year. For example, Contractor submittal of a 2023 annual report in February 2024 shall include Contractor submittal of the annual public education plan for calendar year 2024.

**D. Commercial Edible Food Generator Report.** Commercial Customer list including contact information requested by the City Manager or their designee and designation of each Commercial Customer as either "Tier 1," "Tier 2," or "Non-Covered" Edible Food Generator.

#### **E. Vehicle Inventory.**

1. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage as of December 31.
2. The total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar

## **EXHIBIT F**

### **REPORTING REQUIREMENTS**

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documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.

3. The name, physical location, and contact information of each entity, operation, or facility from whom the Contractor procured RNG for Collection vehicles.

- F. **AB 341/AB 1826 Compliance.** Provide a listing of Commercial Customers subscribing to four (4) or more cubic yards of Solid Waste service per week who do not currently subscribe to Recyclable Materials Collection service from Contractor.

Provide a listing of Commercial Customers subscribing to two (2) or more cubic yards of Solid Waste service per week who do not currently subscribe to Organic Materials Collection service from Contractor.

### **3. Additional Reports**

- A. **Upon Incident Reporting.** City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City Manager or their designee, which shall not to exceed ten (10) days.
- B. **AB 901 Reporting.** At the City's option, City may require that Contractor provide the City copies of Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of the request.
- C. **Customized Reports.** The City reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain; or require a specified format or submission system, such as the use of a web-based software platform.



**EXHIBIT G:  
CORPORATE GUARANTY**

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## EXHIBIT G CORPORATE GUARANTY

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THIS GUARANTY (the "Guaranty") is given as of the \_\_\_ day of \_\_\_\_\_, 2022.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. \_\_\_ Insert Contractor Name and Relationship as Guarantor
- B. Contractor and the City have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of \_\_\_\_\_, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction, and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy, or observe. In the event that Contractor fails to perform, satisfy, or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy, or observe them in the place of the Contractor or cause them to be performed, satisfied, or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement.
2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity, or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Contractor in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).
3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Contractor; or (4) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

## EXHIBIT G

### CORPORATE GUARANTY

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The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by Applicable Law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one (1) or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.
5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

## EXHIBIT G CORPORATE GUARANTY

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6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the Parties hereunder.
7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agents for service of process in California:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy by certified mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not have an effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.



**EXHIBIT H:**  
**CONTRACTOR'S FAITHFUL PERFORMANCE BOND**

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## EXHIBIT H CONTRACTOR'S FAITHFUL PERFORMANCE BOND

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KNOW ALL MEN BY THESE PRESENTS:

That Republic Waste Services of Southern California, LLC dba Garden Grove Disposal, as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the City of Garden Grove and the Garden Grove Sanitary District, a subsidiary district of the City of Garden Grove ("City"), hereinafter called OBLIGEE, in the penal sum of two million five hundred thousand dollars (\$2,500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract with City dated \_\_\_\_\_, to do and perform the following work, to wit: For Recycling, Organic Materials, and Solid Waste Collection and Recycling, Organic Materials, and C&D Processing Services.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void after receipt of written release from the City; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

In the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will pay to OBLIGEE reasonable attorneys' fees, plus costs of suit, in an amount to be fixed by the court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
a California Corporation

By: \_\_\_\_\_  
(PRINCIPAL) (SEAL)

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(ATTORNEY IN FACT) (SEAL)

## EXHIBIT H CONTRACTOR'S FAITHFUL PERFORMANCE BOND

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### CONTINUATION CERTIFICATE

The Federal Insurance Company (hereinafter called the Surety) hereby continues in force its Bond No. 8215-81-18 in the sum of One Million Dollars and 00/100 (\$1,000,000.00) Dollars, on

behalf of Republic Waste Services of Southern California, LLC

in favor of City of Garden Grove and the Garden Grove Sanitary District

subject to all the conditions and terms thereof through April 28, 2022 at location of risk.

This Continuation is executed upon the express condition that the Surety's liability shall not be cumulative and shall be limited at all times by the amount of the penalty stated in the bond.

IN WITNESS WHEREOF, the Surety has caused this instrument to be signed by its duly authorized Attorney-in-Fact and its corporate seal to be hereto affixed this 18 day of March, 2021.

 Federal Insurance Company  
Surety  
By:   
Amber Engel Attorney-in-Fact

**EXHIBIT I:**  
**NOTARY CERTIFICATION**

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**EXHIBIT J:**  
**CONTRACTOR'S IMPLEMENTATION PLAN AND SCHEDULE**

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## EXHIBIT J

### CONTRACTOR'S IMPLEMENTATION PLAN AND SCHEDULE

 <b>Implementation Plan City of Garden Grove</b> Timelines based upon amendment approval by Council on June 28th, 2022*		
Task	Distribution Method	Target Completion Date
<b>Residential Customers - Outreach</b>		
City Letter *	Mailed	8/12/2022
Recycling Guide (Residential)*		Ongoing
Organics Cart Label*	Mailed	8/12/2022
<b>Container Procurement (Commercial Carts)*</b>		Ongoing
<b>Commercial Customers &amp; Multi-Family Dwellings - Outreach</b>		
Auto-Enrollment - Pilot (30 Customers)	Container Delivery	9/16/2022
Postcard (for Auto-Enrollment Pilot & Citywide Rollout)*	Mailed	8/26/2022
Recycling Guide (Commercial & Multi-Family)*		8/5/2022
How To Flyers - Recyclable Materials & Organic Materials (Flyers & Posters)*		7/22/2022
<b>Additional Outreach</b>		
Websites (City & RS)		7/22/2022
Robo Calls (Residential)		7/29/2022
Contamination Tag, Non-Collection & Courtesy Pick Up Notices (Resi & Comm)*		8/19/2022
City Facilities	Container Delivery	8/12/2022
<b>Recyclist Software*</b>	Utilize in field	9/15/2022
<b>Kitchen Pails Available for Purchase Only*</b>	Available	9/1/2022
<b>Annual Route Reviews**</b>		2023
*Development pending City Council approval of Franchise Agreement - 6/28/22		
**Included in Franchise Agreement. Section 4.10 Contamination Monitoring		

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**EXHIBIT K:**  
**CONTRACTOR'S SB 1383 IMPLEMENTATION PLAN**

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# EXHIBIT K

## CONTRACTOR'S SB 1383 IMPLEMENTATION PLAN

 <b>Draft SB 1383 / Intital Implementation Plan and Auto-Enrollment Process***</b> <b>City of Garden Grove</b> <b>Timelines based upon amendment approval by Council on June 28th, 2022*</b>					
Task #		Owner	Target Start Date	Target End Date	Completion Status
<b>Residential Customers - Outreach</b>					
1	<b>City Letter *</b>				
	Develop	RS	7/5/2022	7/15/2022	0%
	Finalize with City approval	GG	7/18/2022	7/22/2022	0%
	Print	RS	7/25/2022	8/5/2022	0%
	Mail	RS	8/8/2022	8/12/2022	0%
2	<b>Recycling Guide (Residential)*</b>				
	Develop	RS	7/5/2022	7/15/2022	0%
	Finalize with City approval	GG	7/18/2022	7/22/2022	0%
	Print	RS	7/25/2022	8/5/2022	0%
	Distribution	RS	8/8/2022	Ongoing	0%
3	<b>Organics Cart Label*</b>				
	Develop	RS	7/5/2022	7/15/2022	0%
	Finalize with City approval	GG	7/18/2022	7/22/2022	0%
	Print	RS	7/25/2022	8/5/2022	0%
	Mail	RS	8/8/2022	8/12/2022	0%
4	<b>Quarterly Newsletter (4x per year distribution)</b>				
	Develop	RS	10/3/2022	10/14/2022	0%
	Finalize with City approval	GG	10/17/2022	10/21/2022	0%
	Print once per quarter	RS	Q4 2022	Q4 2022	0%
5	<b>Container Procurement (Commercial Carts)*</b>				
	Order containers with SB 1383 requirements for customers enrolling in organics and recycling	RS	7/5/2022	Ongoing	0%
<b>Commercial Customers &amp; Multi-Family Dwellings - Outreach</b>					
6	<b>Auto-Enrollment - Pilot</b>				
	Identify 30 customers for auto enrollment (food generators)	RS	8/1/2022	8/12/2022	0%
	Send information postcard about the program (including contamination fees reminder)	RS	8/15/2022	8/26/2022	0%
	Call 30 identified customers the week of delivery	RS	9/6/2022	9/9/2022	0%
	Deliver cart with tag attached	RS	9/12/2022	9/16/2022	0%
	Evaluate pilot auto enrollment with city to determine/plan for city wide rollout	RS	9/26/2022	10/21/2022	0%
7	<b>Postcard (for Auto-Enrollment Pilot &amp; Citywide Rollout)*</b>				
	Develop	RS	7/11/2022	7/22/2022	0%
	Finalize with City approval	GG	7/25/2022	7/29/2022	0%
	Print	RS	8/1/2022	8/12/2022	0%
	Mail	RS	8/15/2022	8/26/2022	0%
8	<b>Recycling Guide (Commercial &amp; Multi-Family)*</b>				
	Develop	RS	7/5/2022	7/15/2022	0%
	Finalize with City approval	GG	7/18/2022	7/22/2022	0%
	Print	RS	7/25/2022	8/5/2022	0%
9	<b>How To Flyers - Recyclable Materials &amp; Organic Materials (Flyers &amp; Posters)*</b>				
	Develop	RS	7/5/2022	7/8/2022	0%
	Finalize with City approval	GG	7/11/2022	7/15/2022	0%
	Print	RS	7/18/2022	7/22/2022	0%

# EXHIBIT K

## CONTRACTOR'S SB 1383 IMPLEMENTATION PLAN

 <b>Draft SB 1383 / Intital Implementation Plan and Auto-Enrollment Process***</b> <b>City of Garden Grove</b> <b>Timelines based upon amendment approval by Council on June 28th, 2022*</b>					
Task #		Owner	Target Start Date	Target End Date	Completion Status
<b>Additional Outreach</b>					
10	<b>Websites (City &amp; RS)</b>				
	Update and upload new SB1383 materials & information	RS / GG	7/11/2022	7/22/2022	0%
	Include sections for Single Family, Commerical & Multi-Family Customers	RS / GG	7/11/2022	7/22/2022	0%
11	<b>Robo Calls (Residential)</b>				
	Develop Script	RS	7/5/2022	7/8/2022	0%
	Finalize with City approval	GG	7/11/2022	7/15/2022	0%
	Aquire customer call list from City	GG	7/18/2022	7/22/2022	0%
	Deploy	RS	7/25/2022	7/29/2022	0%
12	<b>Contamination Tag, Non-Collection &amp; Courtesy Pick Up Notices (Residential &amp; Commercial)*</b>				
	Develop	RS	7/18/2022	7/29/2022	0%
	Finalize with City approval	GG	8/1/2022	8/5/2022	0%
	Print	RS	8/8/2022	8/19/2022	0%
13	<b>City Facilities</b>				
	Conduct Site Visits of City Facilities (defined in Exhibit B4)	RS	7/5/2022	7/15/2022	0%
	Make Recommendations for Compliance	RS	7/18/2022	7/22/2022	0%
	Containers Delivered	RS	8/1/2022	8/12/2022	0%
14	<b>Food Recovery Assistance</b>				
	Identify all commercial customers that meet the definition of Tier One and Tier Two	RS / GG	Complete	Complete	100%
	Tier 1 Inspections	RS	6/13/2022	6/17/2022	0%
	Tier 2 Inspections	RS	1/1/2024	Ongoing	0%
	Provide information to all edible food generators	RS	6/10/2022	Ongoing	0%
15	<b>Recyclist Software*</b>				
	Contract with Recyclist	RS	6/8/2022	6/30/2022	100%
	Provide initial customer data (3 month upload process)	RS	7/1/2022	7/5/2022	0%
	Recyclist data transition complete and ready for use	RS	7/15/2022	9/15/2022	0%
	Use Recyclist in the field for SB 1383 data collection & SB 1383 compliance reporting	RS	9/15/2022	Ongoing	0%
16	<b>Kitchen Pails Available for Purchase Only*</b>				
	Order pails to keep in inventory	RS	7/11/2022	7/22/2022	50%
	Make pails available to customers at request for purchase	RS	9/1/2022	Ongoing	0%
17	<b>Annual Route Reviews**</b>				
	Propose route review methodology and schedule for performance	RS	1/1/2023	1/15/2023	0%
	Conduct route review as scoped	RS	2023	Ongoing	0%
18	<b>Actions upon Identification of Prohibited Container Contaminants**</b>				
	Provide a Courtesy Pick-Up Notice or Non-Collection Notice at door or gate	RS	2023	Ongoing	0%
	Collect the contaminated Reyclable Materials and/or Organic Materials Containers <u>OR</u>	RS	2023	Ongoing	0%
	Inform the customer of Non-Collection	RS	2023	Ongoing	0%
	Corrective action taken to address contaminated materials	RS	2023	Ongoing	0%
	Assess contamination fee after courtesy notice	RS	2023	Ongoing	0%
	Track occurrences of contamination for reporting purposes	RS	2023	Ongoing	0%
19	<b>Records, Reports, and Information Requirements***</b>				
	Monthly Reports	RS	Monthly	Ongoing	0%
	Quarterly Reports	RS	Quarterly	Ongoing	0%
	Annual Report	RS	Annually	Ongoing	0%

\*Development pending City Council approval of Franchise Agreement - 6/28/22

\*\*Included in Franchise Agreement. Section 4.10 Contamination Monitoring

\*\*\*Included in Franchise Agreement. Article 6 Record Keeping and Reporting

**EXHIBIT L:  
DISCOUNT FOR DISABLED OR LOW-INCOME RESIDENTS AGE 65  
AND OLDER**

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## **EXHIBIT L: DISCOUNT FOR DISABLED OR LOW-INCOME RESIDENTS AGE 65 AND OLDER**

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Those residents who qualify under any of the following three (3) categories and apply shall receive a discount of fifteen percent (15%) per month from their regular Solid Waste charges statement.

**A. SUPPLEMENTAL SECURITY INCOME (“SSI”):**

1. SSI are payments by the Federal Government, through the Health and Human Services Department, Social Security Administration (“SSA”) to disabled adults who have limited income and resources and also to Persons aged sixty-five (65) and older without disabilities who meet the financial limits.
2. SSI is a Federal Income supplement program funded by general tax revenues, not Social Security taxes. It is designed to help aged, blind and disabled people who have little or no income in order to provide cash to meet basic needs for food, clothing, and shelter.
3. Qualifications of Applicant - Customer:
  - a. Must be over sixty-five (65), blind, or disabled.
  - b. Must meet all requirements of the SSA established by statute or regulation.
  - c. Must be a United States citizen or national or be a qualified alien.
  - d. The adult applicant must meet the qualifications, not a dependent or other family member.

**B. MEDICAL:**

1. Medi-Cal is California’s Medicaid program. This is a public health insurance program that provides needed health care services for low-income individuals including families with children, seniors, Persons with disabilities, foster care, pregnant women, and low-income people with specific diseases such as tuberculosis, breast cancer, or HIV/AIDS. Medi-Cal is financed equally by the State and Federal government. Payments are made by the State of California Department of Health Care Services (“DHCS”) and administrated by the Orange County Social Services Agency (“OCSSA”) and are for health care provider expense billing/reimbursement purposes.
2. Qualifications of Applicant - Customer:
  - a. Customer must meet all requirements of DHCS established by statute or regulation.
  - b. Customer must file an individual claim with DHCS and/or OCSSA and Customer must receive an award of benefits.
  - c. Must be a United States Citizen or national or be a qualified alien.

**C. SOCIAL SECURITY DISABILITY INSURANCE RECIPIENTS (“SSDI”):**

SSA pays benefits to people who cannot work because they have a medical condition that is expected to last at least one (1) year or result in death.

**EXHIBIT L:  
DISCOUNT FOR DISABLED OR LOW-INCOME RESIDENTS AGE 65  
AND OLDER**

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1. SSDI are payments by the SSA. (Contractor does not accept disabilities from private insurance companies for this reduced Rate, due to the verification and approval process required).
2. Qualifications of Applicant - Customer:
  - a. Customer must meet all requirements of the SSA, established by statute or regulation.
  - b. An individual claim must be filed by Customer with the Federal Government and an award of benefits must be received by the Customer. Must have been disabled and unable to work in accordance with SSA earnings tests involving both the “recent work” and “duration of work” tests.
  - c. Contractor does not allow reduced fees for residents who are receiving checks for disabled minors, dependents, or other family members or friends.



**EXHIBIT M:  
COUNTY WASTE DISPOSAL AGREEMENT**

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AMENDMENT TO WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and the

GARDEN GROVE SANITARY DISTRICT

April 28, 2016  
~~February 23, 2016~~

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County Amendment Authorization Date:

September 22, 2015

County Notice Address:

Director  
OC Waste and Recycling  
300 N. Flower, Suite 400  
Santa Ana, CA 92703

Garden Grove Sanitary District Amendment  
Authorization Date:

February 23 2016

Notice Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## AMENDMENT TO WASTE DISPOSAL AGREEMENT

THIS AMENDMENT TO WASTE DISPOSAL AGREEMENT (the "Amendment") is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the Garden Grove Sanitary District (the "District") designated on the cover page of this Amendment, a general law or charter city and political subdivision of the State of California (the "City").

### RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The County has entered into waste disposal agreements in 2009 (the "Original Waste Disposal Agreements") with all of the cities in the County, including the City, as well as certain sanitary districts located in the County (the "Participating Cities"), pursuant to which the County agreed to provide disposal capacity for waste generated in or under the control of the Participating Cities, and the Participating Cities agreed to deliver or cause the delivery of waste generated in or under the control of the Participating Cities to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original Waste Disposal Agreements.

The City has determined that the execution of this Amendment by the City is in the best interest of the City and will serve the public health, safety and welfare by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and sound environmental management.

The County has determined that the execution by the County of this Amendment will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

Section 1. Amendment to Original Waste Disposal Agreement.

(a) Sections 3.6(C) and 3.6(E) of the Original Waste Disposal Agreement are deleted and replaced in their entirety, as set forth below:

“(C) Receipt of Imported Acceptable Waste on a Contract Basis. Throughout the Term hereof, the County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. “

“(E) Application and Use of Revenues From Other Users. (1) Throughout the term hereof, all revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System (including amounts received by the County as a result of the failure of contract counterparties to deliver minimum required amounts of Imported Acceptable Waste) , shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County’s Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) (“Net Import Revenues”) from the disposal of Imported Acceptable Waste by the Disposal System. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. Net Import Revenues shall be used for the payment of bankruptcy related obligations until payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment. It is estimated that payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment will occur by the end of Fiscal Year 2017-18.

(2) Until the County’s obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as provided in Section (3.6)(E)(1). For any period after the County’s obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as follows:

(i) in Fiscal Year 2017-18, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of \$17.57 per ton;

(ii) in Fiscal Year 2018-19, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported

Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of \$18.01 per ton;

(iii) in Fiscal Year 2019-20, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess in excess of \$18.46 per ton; and

(iv) thereafter, Net Import Revenues shall be equal to 30% of the revenues received by the County from the disposal of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located).

(3) After the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full (i) 50% of any Net Import Revenues (as calculated pursuant to Section 3.6(E)(2)) shall be paid to the County General Fund; and (ii) 50% of such Net Import Revenues shall be paid to the Participating Cities (and to the County, with respect to the unincorporated area) listed in Appendix 5 for use for any purpose by the Participating City, including but not limited to state mandated solid waste programs. Payments of such amounts to the County General Fund and the Participating Cities shall be made by the County within 90 days after the end of each fiscal year. The portion of Net Import Revenues specified above payable to the Participating Cities shall be apportioned in the percentages set forth in Appendix 5.

(4) The percentages set forth in Appendix 5 with respect to each Participating City will be adjusted at the end of Fiscal Year 2019-20 to reflect the percentage of actual deliveries of Acceptable Waste from each Participating City as compared to the total amount of actual deliveries from all of the Participating Cities during Fiscal Years 2017-18, 2018-19, and 2019-20. The County shall notify each Participating City of the revised percentages in Appendix 5 within 120 days after the end of Fiscal Year 2019-20. The revised percentages will be used for the allocation of Net Import Revenues generated during Fiscal Year 2020-21 and thereafter.

(b) Section 4.2(A)(z) is added to the Original Waste Disposal Agreement (immediately following Section 4.2(A)(y)) as follows:

“(z) decrease the amount of Net Import Revenues otherwise payable to the County General Fund and the Participating Cities pursuant to Section 3.6(E)(2) and Section 3.6(E)(3) and use the amount of such decrease to pay costs of the Disposal System.”

(c) Section 6.1(A) and Section 6.1(B) of the Original Waste Disposal Agreement are deleted and replaced in their entirety with the following:

“SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall continue in full force and effect until June 30, 2025, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2023, for an additional term of ten years (the “Renewal Term”) on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2022. If the parties do not renew this Agreement by June 30, 2023, the Agreement shall expire on June 30, 2025.”

(d) The first sentence of Section 6.1(C) of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the following:

“In connection with the parties’ right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2023, negotiate an applicable change in the Contract Rate for such renewal term.”

(e) Appendix 2 of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the form attached hereto.

(f) Appendix 5 shall be added to the Original Waste Disposal Agreement as a new appendix, in the form attached hereto.

(g) All other terms and conditions of the Original Waste Disposal Agreement shall remain in full force and effect.

Section 2. Initial Payment. As consideration for the execution of this Amendment by all of the Participating Cities, and subject to the occurrence of the Amendment Effective Date pursuant to Section 3, the County agrees to pay, from the County OC Waste & Recycling Enterprise Fund, the Amendment Payment to the Participating Cities listed in Appendix 5. The aggregate Amendment Payment shall be \$5,400,000, and shall be distributed to the individual Participating Cities (including the City) in the percentages set forth in Appendix 5 by September 30, 2016.

Section 3. Effectiveness of Amendment. The provisions of this Amendment shall not become effective unless and until the Amendment has been executed by the County and all of the Participating Cities. The date on which the County and all of the Participating Cities have executed the Amendment shall be the “Amendment Effective Date.” The County shall give written notice of the Amendment Effective Date to the City. In the event that the Amendment Effective Date does not occur by June 30, 2016, this Amendment shall be automatically terminated and the County shall have no obligation to make the Amendment Payment.

Section 4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES. Each of the parties to this Amendment represent and warrant that it is a political subdivision of the State of California validly existing under the Constitution and laws of the State and (ii) it has duly authorized the execution and delivery of this Amendment, and has duly executed and delivered the Amendment.

All other terms and conditions of the 2009 Original Waste Disposal Agreement not specifically changed by this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Amendment to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date 4/20/16

By [Signature]  
Director, OC Waste & Recycling

Date 3/8/16

By [Signature]  
[NAME]  
District Representative  
Garden Grove Sanitary District

Date 3/8/16

By [Signature]  
[NAME]  
City Representative  
City of [CITY]

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
James Steinmann, Deputy

APPROVED AS TO FORM  
[Signature]  
OMAR SANDOVAL  
Acting City Attorney  
City of Garden Grove  
DATED: 2-26-16

ATTEST: [Signature]  
KATHLEEN BAILOR, CMC  
City Clerk  
City of Garden Grove  
DATED: 3/9/16



**APPENDIX 2**

**County Acceptable Waste Tonnage Target to be Used  
for Purposes of Section 4.2(b)**

<u>Fiscal Year</u>	<u>Tonnage</u>	<u>Cumulative</u>
FY 2015-16	2,724,250	2,724,250
FY 2016-17	2,681,153	5,405,403
FY 2017-18	2,638,746	8,044,149
FY 2018-19	2,597,017	10,641,166
FY 2019-20	2,558,522	13,199,688
FY 2020-21	2,520,605	15,720,293
FY 2021-22	2,483,256	18,203,549
FY 2022-23	2,483,256	20,686,805
FY 2023-24	2,483,256	23,170,061
FY 2024-25	2,483,256	25,653,317

**APPENDIX 5****PARTICIPATING CITY ALLOCATION PURSUANT TO SECTION 3.6**

<b><u>City</u></b>	<b><u>Allocation Percentage for Purposes of Section 3.6</u></b>	<b><u>Allocation of Initial Payment</u></b>
Anaheim	13.18%	\$711,509
Aliso Viejo	0.67	36,416
Buena Park	2.34	126,275
Brea	2.28	123,085
Costa Mesa	2.18	117,936
Costa Mesa Sanitary District	1.48	79,976
Cypress	2.56	138,115
Dana Point	0.99	53,278
Fullerton	4.10	221,271
Fountain Valley	1.76	95,217
Garden Grove/ GG Sanitary District	7.17	387,197
Huntington Beach	6.13	330,807
Irvine	8.22	444,036
Laguna Beach	1.14	61,796
Laguna Hills	0.74	40,098
Laguna Niguel	1.36	73,341
Laguna Woods	0.41	22,274
La Habra	1.69	91,431
Lake Forest	2.45	132,214
La Palma	0.32	17,325
Los Alamitos	0.58	31,362
Mission Viejo	2.42	130,902
Newport Beach	3.68	198,946
Orange	4.90	264,468
Placentia	1.58	85,116
Rancho Santa Margarita	1.11	60,009
Santa Ana	10.60	572,184
San Clemente	1.40	75,728
San Juan Capistrano	1.23	66,420
Seal Beach	0.82	44,292
Stanton	1.62	87,287
Tustin	1.42	76,648
Villa Park	0.21	11,081
Midway City Sanitary District (Westminster)	2.13	114,893
Yorba Linda	1.78	96,344
County Unincorporated	3.35	180,723
Totals	100%	\$5,400,000

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WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and  
the

• CITY OF GARDEN GROVE

Dated 7/23 2009

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County Authorization Date:

March 24, 2009

County Notice Address:

Director  
OC Waste & Recycling  
300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

City Authorization Date:

City Notice Address:

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APPENDIX 4

FORM OF HAULER ACKNOWLEDGEMENT

## WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Agreement, a general law or charter city and political subdivision of the State of California (the "City").

### RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The City, in the exercise of its police power and its powers under the Act, has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection and disposal of municipal solid waste generated within the City.

A significant portion of municipal solid waste generated within the City historically has been and currently is delivered by such hauler or haulers to the County for disposal in the Disposal System.

In 1997, the City and the County entered in a waste disposal agreement (the "Original WDA"), pursuant to which the County agreed to provide disposal capacity for waste generated in the City, and the City agreed to deliver or cause the delivery of waste generated in the City to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original WDA.

The Original WDA, as amended, will expire by its terms on June 30, 2010, unless the City and the County agree to renew the Original WDA.

The City and the County desire to enter into this agreement to extend, amend and restate the Original WDA, on the terms and conditions set forth herein. The County and City acknowledge that the Original WDA shall remain in full force and effect until the Commencement Date.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and the continuation of sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

ARTICLE I  
DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

“Acceptable Waste” means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

“Act” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

“Agreement” means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

“Applicable Law” means the Act, the Orange County Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

“Board” means the California Integrated Waste Management Board.

“Capital Costs” means all costs of the Disposal System that are classified as capital costs for purposes of the budget of the Department in accordance with procedures established by the County of Orange Auditor-Controller in compliance with the California State Controller’s Manual, including but not limited to all of the categories of costs of the Disposal System reported as “Buildings and Improvements, and Infrastructure” (Object Code 4200) or “Equipment” (Object Code 4000) in the County of Orange – Chart of Accounts, or any successor accounting or reporting system utilized by the County.

“CEQA” means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 *et seq.* as amended or superseded, and the regulations promulgated thereunder.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or

omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

A "Change in Law" shall include but not be limited to any new or revised requirements relating to the funding or provision of disposal services, including but not limited to any regulations for disposal operations or activities associated with the remediation, closure, funding or monitoring of closed sites with respect to facilities comprising the Disposal System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

"City" means, as applicable, the city or Sanitary District designated on the cover page of this Agreement and party to this Agreement.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within or outside the City (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(C) hereof).

"Commencement Date" means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(B) hereof.

"Contract Date" means the first date on which this Agreement has been executed by both parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and
- (3) collected and hauled by Franchise Haulers.

"County" means the County of Orange, a political subdivision of the State of California and party to this Agreement.

"County Plan" means the integrated waste management plan of the County approved by the Board pursuant to the Act as in effect from time to time.



"County Acceptable Waste" means Acceptable Waste generated in the County.

"County OC Waste & Recycling Enterprise Fund" means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

"County-wide Recycling Services" has the meaning set forth in subsection 3.7(A) hereof.

"Cumulative Tonnage Target" for any given Contract Year means the amount specified in Appendix 2 hereto with respect to such Contract Year.

"Department" means OC Waste & Recycling, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof.

"Disposal Agreements" means each of the waste disposal agreements entered into between the County and any city within the County, Sanitary District or operator of any Transfer Station located in the County in accordance herewith.

"Disposal Services" means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

"Disposal System" means the Orange County Waste Disposal System which includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at closed refuse stations formerly operated by the County, as appropriate under Applicable Law.

"Environmental Fund" means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

"Franchise Hauler" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a permit, contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

"Governmental Body" means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Hazardous Substance" has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40.

"Imported Acceptable Waste" means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

"Independent Haulers" means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange which are not obligated to deliver County Acceptable Waste to the Disposal System pursuant to a franchise, contract, permit or other authorization with a city in the County.

"Initial Term" has the meaning specified in Section 6.1(A) hereof.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

"Net Import Revenues" has the meaning ascribed thereto in Section 3.6(E).

"Non-Recycled City Acceptable Waste" means all City Acceptable Waste other than Recycled City Acceptable Waste.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the prime rate established from time to time by the Bank of America, N.A. or its successors and assigns, plus 2%, whichever is lower.

"Participating City" means any city or Sanitary District executing a Disposal Agreement in accordance with Section 3.6(A) hereof and meeting all requisite conditions to the Commencement Date thereof.

"Plan of Adjustment" means the County's Modified Second Amended Plan of Adjustment, confirmed by the United States Bankruptcy Court Central District of California in that Conformed Order Confirming Modified Second Amended Plan of Adjustment, filed May 17, 1996.

"Posted Disposal Rate" means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement.

"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

"Qualified Household Hazardous Waste" means waste materials determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Recycled City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of Section 40180 of the Public Resources Code.

"Renewal Term" has the meaning specified in Subsection 6.1(B) hereof.

"Residue" means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded.

"Restricted Reserves" has the meaning specified in Section 4.5.

"Sanitary Districts" means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified at Cal. Ann. Health & Safety Code Section 6400 *et seq.*, as amended, supplemented, superseded and replaced from time to time.

"Self-Hauled Waste" means City Acceptable Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

"Service Coordinator" means the service coordinator for either party designated pursuant to subsection 3.5(C) hereof.

"Service Covenant" means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

"Source-Separated Household Hazardous Waste" means Qualified Household Hazardous Waste which has been segregated from Acceptable Waste originating or generated within the geographical jurisdiction of the City at the source or location of generation.

"Source-Separated Household Hazardous Waste Disposal System" means the collection centers, facilities, contracts and other arrangements owned or administered by the County for the receipt, handling and disposal of Source-Separated Household Hazardous Waste.

"State" means the State of California.

"Term" shall mean the Term of this Agreement.

"Ton" means a "short ton" of 2,000 pounds.

"Transfer Station" means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine

vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

- (1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and
- (2) a Change in Law.

"Unincorporated Area" means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

"Unincorporated Area Acceptable Waste" means Acceptable Waste originating from or generated within the Unincorporated Area.

"Unrestricted Reserves" means cash and other reserves of the Disposal System which are not Restricted Reserves.

"Waste Disposal Covenant" means the covenants and agreements of the City set forth in Section 3.1 hereof.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Integration; Preservation of Certain Agreements. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions; provided, however, that this Agreement shall not supersede the following agreements:

1) MOU, dated March 10, 1992, between the City of Brea and the County of Orange regarding the Olinda Alpha Landfill as amended on April 6, 1993 and November 29, 1994;

2) MOU, dated May 11, 1995, between the City of Brea and the County of Orange regarding importation of out-of-County waste to the Olinda Alpha Landfill;

3) Settlement Agreement, dated August 1, 1984, between the City of Irvine and the County of Orange regarding the Bee Canyon Landfill (currently called Frank R. Bowerman Landfill);

4) MOU, dated May 16, 1995, between the City of Irvine and the County of Orange regarding importation of out-of-County waste to the Frank R. Bowerman Landfill;

5) MOU, dated September 12, 1995, and amended November 21, 1995, between the City of San Juan Capistrano and the County of Orange regarding importation of out-of-County waste to the Prima Deshecha Landfill;

6) MOU, dated July 1, 1997, between the City of San Clemente[, the Orange County Flood Control District] and the County of Orange regarding the Prima Deshecha Landfill; and

7) Cooperative Agreement, dated August 15, 2006, between the County and the City of Irvine.

(J) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a general law or charter city validly existing under the Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III  
DELIVERY AND ACCEPTANCE OF WASTE  
AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder (other than potential adjustment to the Contract Rate to the extent provided in Article IV hereof) and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such facility in Tonnage equal to the residues that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Any City Acceptable Waste or material derived or segregated therefrom which is held in storage and asserted by the possessor thereof to constitute Recycled City Acceptable Waste awaiting sale or distribution to the secondary materials markets shall constitute Controllable Waste if, when and to the extent that the storage or diversion thereof can be reasonably deemed to constitute an evasion of the Waste Disposal Covenant rather than generally recognized, accepted and prevailing practice in the Southern California materials recovery and recycling industry conducted in accordance with Applicable Law. In order for the owner and/or operator of a transfer station to be entitled to deliver Acceptable Waste from a Participating City to the Disposal System for the Contract Rate as provided in Article IV, such owner and/or operator must execute a direct agreement with the County, acknowledging and agreeing to comply with the obligation of the Participating City to cause the delivery of all Controllable Waste to the Disposal System pursuant to this Agreement. In addition, the County shall be authorized to implement procedures to determine if Acceptable Waste delivered by the owners or operators of Transfer Stations is entitled to utilize the Disposal System for the Contract Rate. Such procedures may include requiring Transfer Stations to certify, under penalty of perjury, the source of any such Acceptable Waste. If necessary, the County may require that, in order to qualify for use of the Disposal System for the Contract Rate, Transfer Stations must deliver Controllable Waste in loads containing only Controllable Waste, and not commingled with Acceptable Waste from entities which are not Participating Cities or Participating Independent Haulers.

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Commencement Date, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement. (1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises, permits or authorizations with all Franchise Haulers, to the extent required by this Section and to the extent allowed by law, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (i) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant, (ii) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and (iii) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station.

(2) The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by (x) subtracting the number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (y) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2). In the event that the County terminates the Waste Disposal Agreement as a result of such breach, the damages due as a result of such termination shall be equal to (aa) the average monthly deliveries by the City for the twelve months prior to the commencement of the breach multiplied by (bb) the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2), multiplied by (cc) the number of months that would have remained in the Term of the Agreement had the termination not occurred. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a

Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Disposal System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries to the Disposal System fall below the Cumulative Tonnage Targets, the County shall be entitled to avail itself of the remedies described in Section 4.2(B) hereof.

(G) Franchise Haulers. The City shall compile and provide the Department with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the Department in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement. The City agrees to include in any revised franchise, contract, license or permit or other authorization granted to Franchise Haulers an obligation of the Franchise Hauler to provide to the County information relating to the Controllable Waste collected by such Franchise Hauler, including origins from which such Controllable Waste was collected, tonnage by type of load (residential, commercial, roll-off box), customer service levels, tonnage delivered by transfer station or material recovery facility utilized, and other related information.

(I) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City (or any territory with respect to which the City assumes, after March 30, 2008, solid waste management responsibility from a Sanitary District or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

### SECTION 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY

(A) Service Covenant. Commencing on the Commencement Date, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Disposal System (or such other facilities, including transfer stations, as the County may determine to use), (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess



of the disposal capacity of the Disposal System, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to keep the Olinda Alpha, Prima Deshecha and Frank R. Bowerman Landfills open for the receipt of waste for disposal or transfer of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(B) Particular Facilities. The Department and the City shall consult and cooperate in determining whether and to what extent from time to time other landfills other than that primarily used by the City shall be utilized to receive Controllable Waste. The Department shall immediately advise the City by telephone of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Disposal System, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The Department shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the landfill primarily used by the City as soon as possible. In the event of a temporary material increase in average daily deliveries of Controllable Waste from the City which the County reasonably believes could result in the permitted daily disposal capacity limit to be exceeded with respect to a particular landfill within the Disposal System, the County shall have the right to redirect the increased Controllable Waste to another landfill within the Disposal System for the duration of the increase in average daily deliveries; provided, however, that in such circumstances the County shall utilize reasonable efforts to first redirect waste which is not Controllable Waste.

(C) Compliance with Service Covenant Not Excused for any Reason. Commencing on the Commencement Date, the obligations of the County to duly observe and comply with the Service Covenant shall apply continuously and without interruption for the Term of this Agreement. In the event that any Change in Law or other Uncontrollable Circumstance impairs or precludes compliance with the Service Covenant by the means or methods then being employed by the County, the County shall implement alternative or substitute means and methods to enable it to satisfy the terms and conditions of the Service Covenant. In the event that a Change in Law precludes the County from complying with such covenants with the means or methods then being employed and from utilizing any alternate or substitute means or methods of compliance, the County shall continuously use all reasonable efforts to effectuate executive, legislative or judicial change in or relief from the applicability of such law so as to enable the County lawfully to resume compliance with such covenants as soon as possible following the Change in Law.

### SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

- (1) Hazardous Waste;
- (2) Controllable Waste delivered at hours other than those provided in Section 3.5 hereof;
- (3) Waste that does not constitute Acceptable Waste;
- (4) Waste that is delivered by any party which has not executed a Waste Disposal Agreement; and
- (5) Controllable Waste consisting primarily of construction and demolition debris or inerts which may cause a particular facility's daily tonnage limit to be exceeded.

(B) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Disposal System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Disposal System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The City shall cause the Franchise Haulers to observe and comply with Applicable Law, the operating rules and regulations of the Department, and the provisions of this Agreement prohibiting the delivery of Unacceptable Waste to the Disposal System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the Department shall take immediate action in accordance with Applicable Law.

(E) Source-Separated Household Hazardous Waste. The County shall maintain, as part of the Disposal System, a Source-Separated Household Hazardous Waste Disposal System for the disposal of Source-Separated Household Hazardous Waste. The disposal service provided by such system shall constitute part of the Disposal Services, and shall be available to Participating Cities as part of the Contract Rate. The County may impose additional fees and charges for services relating to Source-Separated Household Hazardous Waste with respect to cities which are not parties to a Disposal Agreement. The County may provide for the expansion, contraction or modification of the Source-Separated Household Hazardous Waste Disposal System and its services to the extent necessary to ensure the Disposal System's viability; provided, however, if the County chooses to reduce services, the County shall nonetheless continue to expend funds for the Source-Separated Household Hazardous Waste Disposal System each year during the term of this Agreement in an amount at least equal to the amount of funds expended for the Source-Separated Household Hazardous Waste Disposal System during fiscal year 2006-07 as adjusted by changes in the Producer Price Index.

SECTION 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE. Commencing on the Commencement Date, the County in accordance with Applicable Law shall provide or cause to be provided the service of disposing of non-recycled Acceptable Waste originating or generated within the Unincorporated Area and, with respect to such waste, shall comply with the Waste Disposal Covenant as if the County constituted a City subject to the Waste Disposal Covenant hereunder. Rates charged by the County for the disposal of each class of non-recycled Acceptable Waste generated in the Unincorporated Area shall be the same as the Contract Fee charged for the disposal of each class of Controllable Waste. The County shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area) against any challenge thereto, legal or otherwise, by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The County shall bear the cost and expense of any such Legal Proceeding or other challenge (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area).

SECTION 3.5 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Disposal System open for the receiving of Controllable Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Disposal System. The County shall utilize best efforts to maintain substantially similar hours, as were in effect on January 2, 2009, for the receipt of waste through the term of this Agreement (subject to Applicable Law).

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

(C) Service Coordinator. The County and the City each shall designate in writing thirty days prior to the expected Commencement Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

(D) Review of Records. Each party may review the other party's books and records with respect to matters relevant to the performance by either party under this Agreement or otherwise related to the operation of the Disposal System to the extent allowed under the California Public Records Act (interpreted as if the parties to this Agreement were natural persons for purposes of the Public Records Act).

SECTION 3.6 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) On or Before [\_\_\_\_\_], 2009. On or before [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities with respect to Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the County, including other cities in the County, Sanitary Districts, Transfer Stations and Independent Haulers, which waste disposal agreements shall have terms and provisions substantially identical to the terms and provisions of this Agreement; provided, however, that in no event shall such agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity).

(B) After [\_\_\_\_\_], 2009. After [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities, including any city, Sanitary District, Transfer Station and Independent Hauler, or otherwise accept Acceptable Waste from such parties, but only within the limitations contained in this Section. Any such agreement or waste acceptance agreement must provide that the party delivering waste shall pay a Posted Disposal Rate at least 10% higher than the Contract Rate unless the County determines it is in the best interest of the Disposal System to establish a Posted Disposal Rate less than 10% higher than the Contract Rate. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate. In addition, the County shall reserve the right in any such waste disposal agreement at any time, to the extent permitted by Applicable Law, to refuse to receive and dispose of Acceptable Waste from any city, County Sanitary District, Transfer Station and Independent Hauler if and to the extent that such receipt and disposal may materially and adversely affect the ability of the County to comply with its obligations to the Participating Cities under the Disposal Agreements to which each is a party.

(C) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. The term of any such agreement for the disposal of Imported Acceptable Waste shall end by the later to occur of (i) December 31, 2015 or (ii) the date on which County general purpose revenues are no longer expended to pay debt service on the Orange County Public

Financing Authority Lease Revenue Refunding Bonds Series 2005, but in no event later than the last day of the fiscal year commencing July 1, 2015.

(D) Self Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Disposal System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

(E) Application and Use of Revenues From Other Users. All revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System, shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System, and such Net Import Revenues may be used for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), incremental operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. The parties acknowledge that their intention in determining to allow the importation of Imported Acceptable Waste for disposal by the Disposal System is to stabilize the Contract Rate at rates below those which would otherwise prevail in the absence of such importation.

SECTION 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling Services. This Agreement does not require the County to provide for any source reduction, materials recovery, recycling, composting, or other waste diversion services by the County nor any payment therefor by the City, by Franchise Haulers or by ratepayers; provided, however, any County-Wide Recycling Services may be funded through the County OC Waste & Recycling Enterprise Fund. Any such recycling services may be expanded, contracted or modified by the County at any time in its sole discretion.

(B) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the Participating Cities, other Cities, Sanitary Districts, Transfer Stations, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the Disposal Agreements and shall not be funded through the general revenues of the Disposal System.

ARTICLE IV  
CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the System by any Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by each Franchise Hauler shall be (x) \$22.00 per ton from the Commencement Date through June 30, 2010, and (y) \$29.95 per ton on and after July 1, 2010, in both cases contingent on the delivery to the Disposal System of an amount of Acceptable Waste at

least equal to the Cumulative Tonnage Targets identified in Appendix 2, and subject to adjustment necessary to reflect the circumstances set forth in this Section 4.2:

(i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, other than Changes in Law;

(ii) costs incurred by the County (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes) remediating environmental conditions at the Disposal System or inactive or closed disposal sites in the County, which, if uncorrected, could give rise to potential claims under CERCLA or related federal or state statutes, including costs incurred providing indemnification to any Participating City pursuant to subsection 7.3; or

(iii) tonnage shortfalls to the extent permitted by Sections 4.2(B);

(iv) average annual inflation prior to July 1, 2010 in excess of the levels set forth in Section 4.2(H) and escalation pursuant to Section 4.2(F);

(v) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Changes in Law; or

(vi) Capital Costs in excess of the Capital Costs at any point in time during the term hereof exceeding the Cumulative Capital Costs set forth in Appendix 3.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (i), (ii) or (iii) above, the County shall utilize the following remedies in the following order of priority:

(x) reduce the costs of operating the Disposal System to the extent practicable; and

(y) utilize Unrestricted Reserves to pay costs of the Disposal System.

The County will not be required to utilize such remedies prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (iv), (v) or (vi) above.

Any adjustments to the Contract Rate permitted by this Section shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized. The County agrees that it will evaluate the feasibility of long term financing for significant capital costs where appropriate.

(B) County Acceptable Waste Shortfall. In the event that the actual amount of County Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Cumulative Tonnage Target for such Contract Year for County Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to remedy any adverse effects of such tonnage shortfall:

(i) reduce the costs of operating the Disposal System to the extent practicable;

(ii) utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Disposal System;

(iii) utilize Unrestricted Reserves to pay costs of the Disposal System; and

(iv) adjust the Contract Rate.

In the event that implementation of the steps described above does not result in sufficient revenues to satisfactorily address the shortfall in tonnage, the County shall have the right to terminate the Agreement on 60 days written

notice to the City. In addition, in the event that actual deliveries to the Disposal System exceed the Cumulative Tonnage Target as of the end of any Contract Year, the City acknowledges the County shall have the right to establish reserves intended to reflect the potential for lower than expected annual waste deliveries in subsequent years, and that any such reserves shall constitute "Restricted Reserves".

(C) [RESERVED]

(D) Interim Use of Remedies. In the event that, during any Contract Year, waste deliveries to the Disposal System are 25% or more below delivery projections for such Contract Year with the result that the County determines it is unlikely that the Cumulative Tonnage Target will be achieved as of the end of such Contract Year, the County may utilize the remedies described in Section 4.2(B) prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target is actually met, the County shall reimburse any adjustments to the Contract Rate made pursuant to this Section to Participating Cities. Such reimbursement may be given as a credit or adjustment to the Contract Rate for future deliveries, rather than a lump sum payment.

(E) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials. In addition, in the event that the Board of Supervisors of the County makes a determination to implement a facility (including but not limited to a transfer station, landfill, conversion technology facility, or a materials recovery or processing facility), which facility would be intended to provide for disposal alternatives after the closure of one or more of the landfills currently operating within the Disposal System, the County may impose an additional charge of \$0.50 per ton of Acceptable Waste in order to pay the costs of the study, development, planning, construction and/or operation of such facility.

Adjustments pursuant to this Section 4.2(E) shall not require compliance with the provisions of Section 4.2(I).

(F) Escalation. The Contract Rate shall be adjusted each July 1, beginning July 1, 2011. The change will be equal to the positive percentage change in the Consumer Price Index – All Urban Consumers, U.S. city average, All items, Not Seasonally Adjusted, Series ID CUUR0000SA0 ("CPI") as measured from the October 21 months prior to the rate adjustment to the October immediately preceding the rate adjustment. For example: The July 1, 2011 rate adjustment shall be based upon the index change from October 2009, to October 2010, referred to as year 1 and year 2 respectively in the following example .

Formula to calculate percentage change in the Contract Rate:

Step 1:

$$\left[ \frac{\text{October Year 2 CPI}}{\text{October Year 1 CPI}} \right] - 1 = \% \text{ increase in Contract Rate}$$

Step 2: Current Contract Rate x (1 + % increase in Contract Rate) = Contract Rate as of July 1 Year 2

On each April 1, commencing April 1, 2011, the County shall provide the City with notice of the adjustment to the Contract Rate to be effective the following July 1. Such notice shall contain the calculation of the adjustment set forth above. The County will calculate the new Contract Rate each year.

In the event that the change in the CPI is negative, no rate adjustment will be made for that year. No adjustment under this Section 4.2(F) will take place until the October CPI index surpasses the index level as of the October immediately preceding the last annual rate adjustment pursuant to this Section 4.1(F), which will be considered "year 1" in calculating the change in the Contract Rate.

For example, if the CPI is measured as follows: October 2009 = 205, October 2010 = 204, October 2011 = 201, October 2012 = 208, then there would be no adjustment in July 2011, or July 2012, and an adjustment equal to the change from 205 to 208 would be implemented on July 1, 2013.

Adjustments pursuant to this Section 4.2(F) shall not require compliance with the provisions of Section 4.2(I).

(G) Adjustment Resulting from Increased Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of Controllable Waste imposed by state, federal or other agencies (i.e., the State's Integrated Waste Management fee, which is currently \$1.40 per ton). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase pursuant to this Section 4.2(G) as soon as practicable after becoming aware of the imposition of any fees described above.

Adjustments pursuant to this Section 4.2(G) shall not require compliance with the provisions of Section 4.2(I).

(H) Calculation of Cumulative Inflation Rate. For purposes of Section 4.2(A)(iv) for adjustments prior to July 1, 2011, the inflation shall be calculated as the change in the CPI between July of the year of calculation and July 1, 2008. Inflation shall be deemed to exceed the levels set forth below if the ratio between the CPI for July for the year of calculation (calculated in accordance with the formula below) and July 2008 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July CPI of calculation year / CPI for July 2008)

<i>Year of Calculation</i>	<i>Ratio</i>
July 1, 2008	1.0000
July 1, 2009	1.0356
July 1, 2010	1.0723

In the event the CPI is no longer published during the term of this Agreement, such other index identified by the Bureau of Labor Statistics or otherwise generally accepted as a replacement for CPI shall be used for purposes of this Agreement. In the event of an adjustment to the Contract Rate pursuant to this section 4.2(H), such adjustment shall be applied to the Contract Rate effective until June 30, 2010, and the Contract Rate effective July 1, 2010.

Adjustments pursuant to this Section 4.2(H) shall not require compliance with the provisions of Section 4.2(I).

(I) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A) (other than 4.2(A)(iv)) or Section 4.2(B), it shall utilize the procedures described in this Section 4.2(I). The County shall be required to provide the City with at least 90 days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least 45 days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Disposal System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedies described in Section 4.2(A) or (B) prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least 10 days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for

consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In any such meeting, the County shall be represented by the Director of the Department or his or her designee. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County regardless of whether or not the procedures in Section 4.2(J) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(J).

(J) Procedure for Expedited Judicial Review of Contested Rate Adjustment. In the event that, within 30 days after the effective date of any Contract Rate adjustment made pursuant to Section 4.2(I), Participating Cities which, in the aggregate, accounted for more than 50% of the County Acceptable Waste delivered to the County System in the twelve months preceding the Contract Rate adjustment, provide notice to the County of their election to utilize the procedures described in this Section 4.2(J), then the provisions of this Section 4.2(J) shall be utilized by such Participating Cities and the County to resolve the dispute over the Contract Rate Adjustment. In the event that Participating Cities which have delivered the amount of waste contemplated in the preceding sentence do not provide notice to the County of such election, the County shall have no obligation to participate in or cooperate in the implementation of the procedures described below in this Section 4.2(J).

(1) In order to pursue the expedited judicial determination described in this Section (the "Expedited Rate Determination"), the Participating Cities which have made the election described in the paragraph above (the "Challenging Cities") must commence a civil action for breach of contract (the "Action") in the Orange County Superior Court within 45 days of the date on which the Board of Supervisors approves the challenged adjustment to the Contract Rate.

(2) Within two (2) days of filing the Action, the Challenging Cities shall personally serve on the County Counsel both the summons and complaint, and a stipulation and request for the entering of an order incorporating all of the procedural provisions relating to the Expedited Rate Determination as set forth in this Section 4.2(J) (such stipulation and request for order is hereinafter referred to as the "Expedited Rate Determination Stipulation"). The Expedited Rate Determination Stipulation shall be signed by each of the Challenging Cities.

(3) Within fifteen (15) days of the date of service upon the County of the summons and complaint, and Expedited Rate Determination Stipulation, the County Counsel shall execute the Expedited Rate Determination Stipulation and personally serve upon the Challenging Cities through their counsel of record the Expedited Rate Determination Stipulation and its answer to the complaint in the Action. The Stipulation shall also include a waiver by each of the parties of their right to a jury trial of the issues raised in the Action. The City and the County mutually agree that the duty to execute the Expedited Rate Determination Stipulation and comply with the procedures set forth for Expedited Rate Determination in this Section 4.2(J) shall be, and are hereby deemed to be, ministerial duties which the law specifically enjoins upon each of them, and shall be subject to enforcement by the parties herein pursuant to Code of Civil Procedure Section 1085, *et seq.*, or by means of a complaint for specific performance.

(4) Within three (3) days of the date of service by the County upon the Challenging Cities of the fully signed Expedited Rate Determination Stipulation, the County and the Challenging Cities shall jointly make *ex parte* application to the Orange County Superior Court in the Action for the issuance of the order contained in the Expedited Rate Determination Stipulation. At such *ex parte* application, the County and the Challenging Cities shall also seek to confirm with the Orange County Superior Court the briefing schedule, and request a hearing date in accordance with the procedures set forth in this Section 4.2(J).

(5) Within ten (10) days of the date of service by the County upon the Challenging Cities of the answer in the Expedited Rate Determination, the Challenging Cities shall file with the court and personally serve upon the County the Challenging Cities' opening brief and the Record in the Expedited Rate Determination. The opening brief shall not exceed 15 pages in length. The Record shall consist of, and be limited to, the record of the proceedings before the Board of Supervisors with respect to the adjustment of the Contract Rate, including but not limited to the County Report and the City Report prepared by each or any of the Challenging Cities pursuant to Section 4.2(I), any materials filed or lodged with the Board of Supervisors and the Orange County



Waste Commission, the transcript of the proceedings of the Board of Supervisors meeting and the Orange County Waste Commission, the minutes of the Board of Supervisors and the Orange County Waste Commission meeting, and the resolution and/or other documentation evidencing action by the Board of Supervisors and the Orange County Waste Commission to adjust the Contract Rate pursuant to Section 4.2(A) or (B). The record shall also include the most recent reports prepared pursuant to Sections 4.6 and 4.7. The Expedited Rate Determination shall be decided solely on the evidence in the Record, and no extrinsic evidence shall be submitted to or considered by the court.

(6) Within ten (10) days of service by the Challenging Cities of their opening brief and the Record, the County shall file and personally serve upon the Challenging Cities the County's opposition brief. The opposition brief shall not exceed 15 pages in length.

(7) Within five (5) days of service by the County upon the Challenging Cities of the opposition brief, the Challenging Cities may file and personally serve upon the County a rebuttal brief, which shall not exceed 10 pages in length.

(8) The trial of the Expedited Rate Determination shall be conducted as a hearing which shall be conducted at the date set by the court in the *ex parte* hearing conducted pursuant to Section 4.2(J)(4), or such other date and time ordered by the court. If the court requests the parties to prepare supplemental briefs in response to any question or issue raised by the court, the parties may do so.

(9) The standard of review for the Expedited Rate Determination shall be the preponderance of the evidence based upon the Record. The burden of proof shall be borne by the Challenging Cities, and the burden of proof shall be the same as with respect to a plaintiff in a damages action for breach of contract. Both parties have participated in the drafting of this Agreement. Accordingly, nothing set forth in this Agreement shall be interpreted or construed for or against either of the parties as a consequence of their participation in the drafting of this Agreement.

(10) The court shall issue its written statement of decision and enter judgment within thirty (30) days of the date of the hearing in the Expedited Rate Determination.

(11) If the court determines that any portion of the County's adjusted Contract Rate which is the subject of the Expedited Rate Determination was improperly imposed, the County shall, within 30 days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest calculated at the highest percentage rate that does not constitute usury under California laws. Such reimbursement may be made in the form of a reduction in the Contract Rate for a future period (not to exceed twelve months) reasonably calculated to provide full reimbursement of the amounts described above.

(12) If for any reason the court does not sign the order contained in the Expedited Rate Determination Stipulation, the City shall, within 30 days of the court's denial of such requested order, file with the court and personally serve upon the County a motion for summary judgment and/or motion for judgment on the pleadings, in accordance with Code of Civil Procedure Section 437(c) and 438. By executing this Agreement, the parties hereby stipulate that, in the event that the Challenging Cities file such summary judgment motion and/or motion for judgment on the pleadings, the Record shall be deemed to have been incorporated into the complaint and answer filed by the Challenging Cities and the County, and no evidence outside of the Record is relevant or material to the dispute raised in the Expedited Rate Determination. The briefing schedule and hearing on such motion for summary judgment and/or motion for judgment on the pleadings shall be in accordance with Code of Civil Procedure Section 437(c). The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (12).

(13) In the event that the court both does not sign the order contained in the Expedited Rate Determination Stipulation and either does not hear or does not issue a ruling on the merits on the motion for summary judgment and/or judgment on the pleadings which is dispositive of the issues, claims and causes of action in the complaint filed by the Challenging Cities, the County and the Challenging Cities shall, within twenty days following the issuance of the Court's order or decision not to honor the parties' stipulation or not to hear the parties' motion for summary judgment, make application to the Presiding Judge of the Orange County

Superior Court for an expedited hearing or trial date. The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (13). In this regard, and without limiting the foregoing, the only evidence to be presented at the hearing or trial shall be the Record, no testimony shall be presented at the hearing or trial; and both the County and the Challenging Cities waive all rights to a jury trial, to any reconsideration of the decision of the court, to a new trial after the court renders a decision, and to any appeal or review of the decision of the court.

#### SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.

(A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Disposal System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate from City revenues, the City, as its own Franchise Hauler, shall have direct responsibility for payment of the Contract Rate, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law. To the extent provided in Section 7.5 hereof, the obligation of the City for such Contract Rates shall be limited to amounts in the City's Solid Waste Enterprise Fund. From the Commencement Date to the date of expiration or termination of this Agreement, the obligation to the City to pay the Contract Rate, to the extent the City rather than Franchise Haulers is responsible directly for payment and provided that the Service Covenant has been complied with, shall be absolute and unconditional and shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers other than City municipal collection forces, the obligation to pay the Contract Rate shall rest with such Franchise Haulers and not with the City and, unless the City has agreed with the County to be responsible for Franchise Hauler payments, the City shall not be financially responsible for any delay or failure by such Franchise Hauler to pay the Contract Rate or any portion thereof when due. In the event of any such failure, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City may include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay the billed amount and shall provide the County with written objection within 30 days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. If the City or the Franchise Hauler and the County are not able to resolve such dispute within 30 days after the City's or the Franchise Hauler's objection, either party may pursue appropriate legal remedies.

SECTION 4.4 BILLING OF THE CONTRACT RATE. The County shall continue to bill Contract Rates after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

SECTION 4.5 RESTRICTED RESERVES. For purposes of this Agreement, "Restricted Reserves" means cash and other reserves of the Disposal System which are restricted to specific uses or are otherwise being reserved by the County to meet its obligations hereunder throughout the term of the Agreement with respect to the Disposal System pursuant to any Applicable Law, contract, adopted budget, budgetary policy of the County with respect to the Disposal System, or other arrangement. Such cash and other reserves are not required to be deposited in separate accounts or funds in order to constitute "Restricted Reserves" hereunder, and may be commingled with

Unrestricted Reserves or other funds of the County attributable to the Disposal System. "Restricted Reserves" shall include, but not be limited to, the following:

- (i) reserves for closure of components of the Disposal System to the extent required by Applicable Law;
- (ii) amounts reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Disposal System;
- (iii) reserves established to protect the Disposal System against the adverse financial impact of potential decreases in waste deliveries pursuant to Section 4.2(B);
- (iv) amounts reserved to pay the costs of capital improvements with respect to the Disposal System;
- (v) amounts funded from revenues during the early years of the term of the Agreement reserved to enable the County to provide disposal services for the Contract Rate during the later years of the Agreement;
- (vi) amounts temporarily held by the County prior to payment to the State or other Governmental Bodies pursuant to Applicable Law (including any fees or charges payable to the State Integrated Waste Management Board);
- (vii) reserves required to meet bond covenants pursuant to financing agreements for Disposal System assets to the extent such amounts must be legally separate and distinct from other reserves identified in this Section;
- (viii) security deposits from landfill deferred payment program users;
- (ix) amounts held by the County in the Environmental Fund (provided, however, that such amounts in the Environmental Fund will be made available and used by the County if required to pay costs relating to environmental remediation or other related costs);
- (x) AB939 surcharges;
- (xi) amounts held by the County in the Corrective Action Fund held pursuant to CCR Title 27 to demonstrate financial assurance to pay for potential groundwater contamination; and
- (xii) an amount equal to three months of budgeted expenses for the Disposal System for the current fiscal year, representing working capital of the Disposal System.

**SECTION 4.6 AUDITED FINANCIAL STATEMENTS.** The County shall annually, on or before January 1 each year, prepare or cause to be prepared and have on file for inspection an annual report for the preceding Contract Year, accompanied by a certificate of an independent public accountant or of the County Auditor and Controller as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles) relating to the Disposal System, the Disposal Services, and the fiscal activities of the County OC Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the County OC Waste Disposal Enterprise Fund as of the end of the Contract Year and revenue and expenses for the Contract Year.

**SECTION 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION.** The County shall annually, on or before May 1 of each year, prepare or cause to be prepared, an updated Ten-Year Financial Projection for the Disposal System. Said Financial Projection shall include at least two full years of prior actual data and ten years of future projections including the following elements:

1. County Acceptable Waste, in tons;
2. Imported Acceptable Waste, in tons;
3. Revenues and expenditures;
4. Cash fund balances, including all monies in the County Solid Waste Enterprise Fund, with specific delineation of monies in the Environmental Fund, Restricted Reserves, Unrestricted Reserves, and all other funds of the System.
5. Projected liabilities for closure and post closure as well as reasonable reserves for other environmental costs.

The purpose of the Ten-Year Financial Projection is to keep the City fully informed about the future financial condition of the Disposal System. The County shall cause a copy of the Ten-Year Financial Projection to be delivered to the City Manager of the City no later than May 1 of each year. Upon request, the County shall make available to the Cities supporting information related to the ten-year financial projection

#### ARTICLE V BREACH, ENFORCEMENT AND TERMINATION

**SECTION 5.1 BREACH.** The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

**SECTION 5.2 CITY CONVENIENCE TERMINATION.** The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon 90 days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to the Contract Rate in effect at the time of such termination (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2) multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve months (or, if the City had been in breach of the Waste Disposal Covenant during such prior months, such amount as would have been delivered if the City had complied with the Waste Disposal Covenant), multiplied by the number of years remaining in the Term of the Agreement.

#### **SECTION 5.3 TERMINATION.**

(A) **By City.** Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the County stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The County has neither challenged in an appropriate forum (in accordance with Section 5.5) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the

County shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

(B) By County. Except as expressly provided herein, the County shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the City substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(1) The County has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the County right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.5) the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.4 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Disposal System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

## ARTICLE VI TERM

### SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Contract Date and shall continue in full force and effect until June 30, 2020, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2018, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2017. If the parties do not renew this Agreement by June 30, 2018, the Agreement shall expire on June 30, 2020.

(C) Contract Rate During Renewal Term. In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2018, negotiate an applicable change in the Contract Rate for such renewal term. In determining any revisions to the

Contract Rate to be applicable during any renewal period, in addition to the circumstances described in Section 4.2(A), the parties may take into consideration the following parameters, including but not limited to:

- (i) actual cost of operations;
- (ii) population growth;
- (iii) increase or decrease in available tonnage;
- (iv) economic and disposal market conditions in the Southern California region;
- (v) changes in transportation and technology;
- (vi) closure and expansion of nearby landfills;
- (vii) capacity of the Disposal System; and
- (viii) available reserves which are in excess of the amount reasonably required as

reserves.

(D) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E)(2), 5.1, 5.3, 5.5, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

#### SECTION 6.2 COMMENCEMENT DATE.

(A) Obligations of the Parties Prior to the Commencement Date. The parties acknowledge that the Disposal Agreements may be executed and delivered on different dates and that, except as provided in this subsection, neither the County nor the City shall be obligated to perform its obligations hereunder until the participation threshold provided herein has been met and the other conditions to the occurrence of the Commencement Date have occurred. Prior to the Commencement Date, each party hereto shall at its own expense exercise good faith and due diligence and take all steps within its reasonable control in seeking to satisfy the conditions to the Commencement Date set forth herein as soon as reasonably practicable. The County and the City, each at its own expense, shall cooperate fully with each other and the other Participating Cities in connection with the foregoing undertaking. Until the Commencement Date occurs, the Original WDAs shall remain in full force and effect.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which the percentage of the County's Acceptable Waste attributable to Participating Cities which have executed and delivered Disposal Agreements shall exceed 85% percent (using the percentage rates attributed to such Cities in Appendix 1). Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with this Section 6.2(b) and Appendix 1 of this Agreement.

(C) Satisfaction of Condition and Commencement Date. Upon the satisfaction or waiver of the condition to the Commencement Date, the County shall give written notice thereof to the cities which have theretofore executed Disposal Agreements. The parties shall thereupon hold a formal closing acknowledging the satisfaction or waiver of the condition to the Commencement Date, certifying that the Commencement Date has occurred and designating the Participating Cities. Copies of all of the documents or instruments constituting or evidencing satisfaction of the Commencement Date conditions shall be furnished to each party prior to or on the Commencement Date.

(D) Newly Incorporated Cities. Any city within Orange County which becomes incorporated after the Commencement Date shall upon request be offered the opportunity by the County to become a Participating City. If any such City executes a Disposal Agreement and meets the applicable condition provided in subsection 6.2(B) hereof within 180 days following the date of its municipal incorporation, then such City shall be entitled to execute a Waste Disposal Agreement on substantially the same terms and conditions as this Agreement (including the Contract Rate), notwithstanding the limitations contained in Section 3.6(B).

(E) Failure of Condition. If by \_\_\_\_\_ [120 DAYS AFTER BOARD APPROVAL], or such later date as the County may agree, the condition to the Commencement Date specified in this Section is not satisfied, either party hereto may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the condition to the Commencement Date. Notwithstanding anything in this Agreement to the contrary, in the event that this Agreement is terminated pursuant to this Section, the provisions of the Original WDA shall remain in full force and effect on the terms and conditions set forth therein.

#### ARTICLE VII GENERAL PROVISIONS

SECTION 7.1 OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the Department.

#### SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Disposal System. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Disposal Services to the Participating Cities in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the

Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

**SECTION 7.3 INDEMNIFICATION.** To the extent permitted by law, the County agrees that, it will protect, indemnify, defend and hold harmless the City from and against all Loss-and-Expense arising from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA or comparable state statutes) of municipal solid waste disposal pursuant to this Agreement. In the event the City shall determine that because of conflict or any other reason that it wishes to be defended by legal counsel other than the legal counsel provided by the County, the cost of providing such legal counsel shall be the City's sole responsibility. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. Any costs incurred by the County pursuant to this Section shall be considered an Uncontrollable Circumstance cost and the County shall be entitled to adjust the Contract Rate as provided in subsection 4.2(A) herein. The County shall not, however, be required to indemnify or defend the City from and against all Loss-and-Expense arising from any willful, knowing, illegal or negligent disposal of hazardous waste (other than incidental amounts of Household Hazardous Waste commonly found in municipal solid waste and permitted to be disposed in Class III landfills under RCRA) which violates the County's landfill permits or Applicable Law. The parties agree that this provision constitutes an indemnity under CERCLA (to the extent of the specific provisions of this Section). The parties acknowledge that this subsection is not intended to and does not create any obligation on the part of the County to provide any indemnification or defense to any Franchise Hauler, whether franchised or not, or any Independent Hauler or Transfer Station, under any circumstances. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the County in the defense.

**SECTION 7.4 RELATIONSHIP OF THE PARTIES.** Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The County is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

**SECTION 7.5 LIMITED RECOURSE.**

(A) To the City. Except in the event the City has not established or maintained a City Solid Waste Enterprise Fund, no recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in any such Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) To the County. No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

**SECTION 7.6 PRE-EXISTING RIGHTS AND LIABILITIES.** Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Contract Date relating to the disposal of waste in the Disposal System or any other related matter.



SECTION 7.7 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.8 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.11 NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.13 ASSIGNMENT OF AGREEMENT. (A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, either party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

(B) Sale. The County shall not enter into any agreement for the sale of the Disposal System which provides for an effective date for such sale prior to the termination of this Agreement.

SECTION 7.14 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.15 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.13 hereof.

SECTION 7.16 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

Date 7/7/09

COUNTY OF ORANGE

By [Signature]  
Director, OC Waste & Recycling

Date 6-2-09

By [Signature]  
[NAME]  
Sanitary District Representative  
Garden Grove Sanitary District

ATTEST:

Date 6/8/09

By [Signature]  
[NAME]  
Sanitary District Representative  
Garden Grove Sanitary District

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
Date 07.27.09

Approved as to form:  
General Counsel  
Garden Grove Sanitary District

By [Signature]  
Date 6/8/09

**APPENDIX 1**

**ESTIMATED ANNUAL TONNAGE**

## APPENDIX 1

PERCENTAGE OF COUNTY ACCEPTABLE WASTE ATTRIBUTABLE TO PARTICIPATING CITIES FOR  
PURPOSE OF SECTION 6.2(b)

Jurisdiction	Percentage of County Acceptable Waste
Anaheim	13.4%
Santa Ana	10.6%
Irvine	7.5%
Huntington Beach	6.0%
Orange	5.8%
Garden Grove	5.1%
Fullerton	4.5%
Unincorporated Orange County <sup>(1)</sup>	4.3%
Costa Mesa	3.6%
Newport Beach	3.0%
Lake Forest	2.6%
Buena Park	2.5%
Mission Viejo	2.3%
Westminster	2.3%
Yorba Linda	2.3%
Brea	2.1%
Tustin	2.0%
Cypress	1.9%
La Habra	1.8%
San Clemente	1.7%
Fountain Valley	1.6%
Laguna Niguel	1.6%
Placentia	1.6%
San Juan Capistrano	1.6%
Laguna Beach	1.4%
Dana Point	1.2%
Stanton	1.1%
Rancho Santa Margarita	1.0%
Laguna Hills	0.9%
Seal Beach	0.8%
Aliso Viejo	0.7%
Los Alamitos	0.5%
La Palma	0.3%
Laguna Woods	0.2%
Villa Park	0.2%
Total	100%

(1) Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with Section 6.2(b) of this Agreement.

(2) A Participating City will only be included for purposing of determining the Commencement Date upon (i) execution of a Waste Disposal Agreement by that Participating City and (ii) execution of a Hauler Acknowledgement(s) by the Franchise Hauler(s) operating within such Participating City

**APPENDIX 2**  
**CUMULATIVE TONNAGE TARGETS**

## APPENDIX 2

**Cumulative County Acceptable Waste Tonnage Target to be Used  
for Purposes of Section 4.2 (B)**

<i>Fiscal Year</i>	<i>County Acceptable Waste Tonnage</i>	<i>Cumulative County Acceptable Waste Tonnage</i>
FY 2008-09	3,170,387	3,170,387
FY 2009-10	3,092,806	6,263,193
FY 2010-11	3,185,590	9,448,783
FY 2011-12	3,344,870	12,793,653
FY 2012-13	3,445,216	16,238,869
FY 2013-14	3,514,120	19,752,989
FY 2014-15	3,549,262	23,302,251
FY 2015-16	3,565,608	26,867,859
FY 2016-17	3,582,033	30,449,892
FY 2017-18	3,598,535	34,048,427
FY 2018-19	3,615,115	37,663,542
FY 2019-20	3,631,774	41,295,316

APPENDIX 3  
CUMULATIVE CAPITAL COSTS  
to be Used  
for Purposes of Section 4.2(A)vi

Fiscal Year (ending June 30)	Annual Capital Costs	Cumulative Capital Costs
2009	\$37,939,538	\$37,939,538
2010	\$59,343,405	\$97,282,943
2011	\$10,433,978	\$107,716,921
2012	\$13,678,113	\$121,395,034
2013	\$17,525,040	\$138,920,074
2014	\$11,259,518	\$150,179,592
2015	\$37,682,758	\$187,862,350
2016	\$5,068,800	\$192,931,150
2017	\$10,662,265	\$203,593,415
2018	\$29,397,698	\$232,991,113
2019	\$8,263,795	\$241,254,908
2020	\$45,103,805	\$286,358,713

## FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of May 26, 2009 (the "Acknowledgment"), by GARDEN GROVE DISPOSAL, INC. (the "Franchise Hauler").

### WITNESSETH

WHEREAS, the Garden Grove Sanitary District (the "District") and the Franchise Hauler have heretofore entered into an agreement entitled Second Updated and Restated Agreement between the Garden Grove Sanitary District and Garden Grove Disposal, dated as of November 30, 1999, (the "Franchise"); and

WHEREAS, the Franchise provides for the collection and disposal of certain municipal solid waste as described therein ("Franchise Waste") generated within the District; and

WHEREAS, Orange County (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the District and the County have heretofore entered into a Waste Disposal Agreement, dated as of May 26, 2009 (the "Disposal Agreement") determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the District and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the District and the District has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the District provide significant benefits to the Franchise Hauler; and \*

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the District, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the District desires to obtain, and the Franchise Hauler desires to provide, this Acknowledgment to assure that the District and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste delivery obligations which have been agreed to by the District under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.



## ACKNOWLEDGMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.

2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the District to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the District of the Disposal Agreement, or (c) the right, power or authority of the District to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with the Disposal Agreement and this Acknowledgment.

3. The Franchise Hauler hereby represents that this Acknowledgment has been duly authorized by all necessary action of its governing body.

4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste), to the Disposal System, and shall otherwise assist the District in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.

5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.

7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.

8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.

9. This Acknowledgment may be enforced by the District by any available legal means. In any enforcement action by the District, the burden of proof shall be on the Franchise Hauler to

demonstrate compliance herewith.

10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the Franchise Hauler from the date hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.

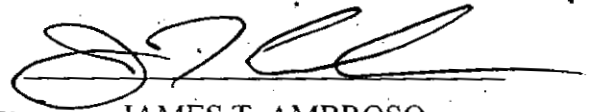
11. The Franchise Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.

12. The Franchise Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). The Franchise Hauler will provide customer service levels and route lists. The Franchise Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

IN WITNESS WHEREOF, the Franchise Hauler has caused this Acknowledgment to be executed by its duly authorized officers or representatives as of 26th day of May, 2009.

GARDEN GROVE DISPOSAL, INC.

Signature:



Printed Name:

JAMES T. AMBROSO

Title:

VICE PRESIDENT

**EXHIBIT N:  
FACILITIES LIST**

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## EXHIBIT N: FACILITIES LIST

### Facilities List

Approved or Designated Facility Type	Required Facility Information
Approved Transfer Facility(ies)	<p>Facility Name: CVT Regional Material Recovery and TS</p> <ul style="list-style-type: none"> <li>• Address: 1131 N. Blue Gum St. Anaheim, CA 92806</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: SWIS 30-AB-0335</li> <li>• Facility Type: Materials Recovery Facility and TS</li> <li>• Material Type(s): Source Separated Recyclable Materials, Yard Waste, Food Waste, Source Separated Organic Materials, C&amp;D, Solid Waste</li> </ul> <p>Facility Name: Rainbow Transfer/Recycling</p> <ul style="list-style-type: none"> <li>• Address: 17121 Nichols Ln Huntington Beach CA, 92647</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: SWIS 30-AB-0099</li> <li>• Facility Type: Materials Recovery Facility and TS</li> <li>• Material Type(s): Source Separated Recyclable Materials, Yard Waste, Food Waste, Source Separated Organic Materials, C&amp;D, Solid Waste</li> </ul>
Designated Disposal Facility(ies)	<p>Facility Name: Olinda Alpha Landfill</p> <ul style="list-style-type: none"> <li>• Address: 1942 N. Valencia Avenue Brea, CA 92823</li> <li>• Operator: OC Waste and Recycling</li> <li>• SWIS Number: SWIS 30-AB-0035</li> <li>• Facility Type: Landfill</li> <li>• Material Type(s): Solid Waste</li> <li>• (If Applicable) Transfer Facility: CVT Regional Material Recovery and TS</li> </ul> <p>Facility Name: Frank R. Bowerman Sanitary LF</p> <ul style="list-style-type: none"> <li>• Address: 11002 Bee Canyon Access Road, Irvine, CA 92618</li> <li>• Operator: OC Waste and Recycling</li> <li>• SWIS Number: 30-AB-0360</li> <li>• Facility Type: Landfill</li> <li>• Material Type(s): Solid Waste</li> <li>• (If Applicable) Transfer Facility: CVT Regional Material Recovery and TS</li> </ul>
Approved C&D Facility(ies)	<p>Facility Name: CVT Regional Material Recovery and TS</p> <ul style="list-style-type: none"> <li>• Address: 1131 N. Blue Gum St. Anaheim, CA 92806</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: SWIS 30-AB-0335</li> <li>• Facility Type: Materials Recovery Facility and TS</li> <li>• Material Type(s): Source Separated Recyclable Materials, Yard Waste, Food Waste, Source Separated Organic Materials, C&amp;D Debris, Solid Waste</li> </ul>

## EXHIBIT N: FACILITIES LIST

Approved or Designated Facility Type	Required Facility Information
Approved Organic Materials Processing Facility(ies)	<p>Facility Name: Agromin OC Ontario</p> <ul style="list-style-type: none"> <li>• Address: 8292 Edison Ave. Ontario, CA 91762</li> <li>• Operator: Agromin</li> <li>• SWIS Number: SWIS 36-AA-0499</li> <li>• Facility Type: Composting site</li> <li>• Material Type(s): Organics</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul> <p>Facility Name: Agromin OC- Oceanside Green Materials</p> <ul style="list-style-type: none"> <li>• Address: 1200 Wilshire Rd. Fallbrook, CA 92028</li> <li>• Operator: Agromin</li> <li>• SWIS Number: 37-AA-0991</li> <li>• Facility Type: Composting</li> <li>• Material Type(s): Organics</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul> <p>Facility Name: Recology Blossom Valley Organics</p> <ul style="list-style-type: none"> <li>• Address: 6061 N Wheeler Ridge Rd. Lamont, CA 93242</li> <li>• Operator: Recology</li> <li>• SWIS Number: SWIS 15-AA-0307</li> <li>• Facility Type: Composting</li> <li>• Material Type(s): Organics</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul> <p>Facility Name: Kochergen Farms Composting</p> <ul style="list-style-type: none"> <li>• Address: Avenal Cutoff Rd. and Omaha Ave. Avenal CA 93239</li> <li>• Operator: Kochergen Farms</li> <li>• SWIS Number: SWIS 16-AA-0022</li> <li>• Facility Type: Composting</li> <li>• Material Type(s): Organics</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul> <p>Facility Name: Republic Services Copper Mountain Landfill</p> <ul style="list-style-type: none"> <li>• Address: 34853 East County 12th Street, Wellton, AZ 85356</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: None</li> <li>• Facility Type: Landfill</li> <li>• Material Type(s): Organics</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul>

## EXHIBIT N: FACILITIES LIST

Approved or Designated Facility Type	Required Facility Information
	<p>Facility Name: Rialto BioEnergy Facility,</p> <ul style="list-style-type: none"> <li>• Address: 503 East Santa Ana Avenue Rialto, CA 92376</li> <li>• Operator: Anaergia Services</li> <li>• SWIS Number: SWIS 36-AA-0446 503</li> <li>• Facility Type: Large Volume In-Vessel Digestion Facility</li> <li>• Material Type(s): Source Separated Organic Materials</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul>
Approved Recyclable Materials Processing Facility	<p>Facility Name: CVT Regional Material Recovery and TS</p> <ul style="list-style-type: none"> <li>• Address: 1131 N. Blue Gum St. Anaheim, CA 92806</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: SWIS 30-AB-0335</li> <li>• Facility Type: Materials Recovery Facility and TS</li> <li>• Material Type(s): Source Separated Recyclable Materials, Yard Waste, Food Waste, Source Separated Organic Materials, C&amp;D Debris, Solid Waste</li> </ul> <p>Facility Name: Rainbow Transfer/Recycling</p> <ul style="list-style-type: none"> <li>• Address: 17121 Nichols Ln Huntington Beach CA, 92647</li> <li>• Operator: Republic Services</li> <li>• SWIS Number: SWIS 30-AB-0099</li> <li>• Facility Type: Materials Recovery Facility and Transfer Station</li> <li>• Material Type(s): Source Separated Recyclable Materials, Yard Waste, Food Waste, Source Separated Organic Materials, C&amp;D Debris, Solid Waste</li> </ul> <p>Facility Name: Waste Management Of Orange</p> <ul style="list-style-type: none"> <li>• Address: 2050 Glassell Street Orange, CA 92865</li> <li>• Operator: USA Waste Of California, Inc</li> <li>• SWIS Number: 30-AB-0363</li> <li>• Facility Type: Transfer/ Processing</li> <li>• Material Type(s): Source Separated Recyclable Materials</li> <li>• (If Applicable) Transfer Facility: CVT or Rainbow</li> </ul>

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**EXHIBIT O:**  
**DOCUMENTATION OF RESIDENTIAL ORGANICS COST PER TON**



## EXHIBIT O: DOCUMENTATION OF RESIDENTIAL ORGANICS COST PER TON

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Exhibit based on January 10, 2022 Residential Organic Materials analysis provided by Contractor.

Total CVT Residential Organic Materials Tons Collected	107,595
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Approved Facility from Exhibit O	CVT Cost (Pre-processing and/or Transfer)	Transportation Cost/Ton	Tip Fee/ton	Cost/ton	Allocation	Tons Delivered to Facility	Total Facility Cost: Pre-processing, Transfer, Transportation and Tip Fee
Agromin	\$40.46	\$13.60	\$68.05	\$122.11	40%	43,038	\$5,255,294
Kochergen	\$12.21	\$60.77	\$30.99	\$103.97	40%	43,038	\$4,474,818
Recology	\$31.00	\$50.02	\$44.29	\$125.31	20%	21,519	\$2,696,543

<b>Totals</b>	<b>100%</b>	<b>107,595</b>	<b>\$ 12,426,655</b>
<b>Rate per ton for Residential Organic Materials</b>			<b>\$115.49</b>

## EXHIBIT G CORPORATE GUARANTY

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THIS GUARANTY (the "Guaranty") is given as of the 28 day of July, 2022.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. Republic Waste Services of Southern California, LLC, a Delaware Limited Liability Company dba Garden Grove Disposal ("Contractor") is an affiliate of Republic Services, Inc., a Delaware corporation ("Guarantor").
- B. Contractor and the City have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of June 28, 2022, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction, and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy, or observe. In the event that Contractor fails to perform, satisfy, or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy, or observe them in the place of the Contractor or cause them to be performed, satisfied, or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement.
2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity, or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Contractor in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).
3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Contractor; or (4) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

## EXHIBIT G CORPORATE GUARANTY

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The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by Applicable Law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one (1) or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.
5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

## EXHIBIT G CORPORATE GUARANTY

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6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the Parties hereunder.
7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agents for service of process in California:

CT Corporation System

330 N. Brand Blvd.

Glendale, CA 91203

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not have an effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.



# INCREASE PENALTY RIDER

BOND AMOUNT \$1,000,000.00

BOND NO. 8215-81-18

To be attached and form a part of Bond No. 8215-81-18, executed by Federal Insurance Company as surety, on behalf of Republic Waste Services of Southern California, LLC as current principal of record, and in favor of City of Garden Grove and the Garden Grove Sanitary District, as Obligee for Collection, Disposal and Recycling of residential, commercial, industrial, and construction solid wastes and refuse, and in the amount of One Million Dollars and 00/100 (\$1,000,000.00).

In consideration of the agreed premium charged for this bond, it is understood and agreed that Federal Insurance Company hereby consents that effective from the 29th Day of April, 2022, said bond shall be amended as follows:

THE BOND PENALTY SHALL BE INCREASED:

FROM: One Million Dollars and 00/100 (\$1,000,000.00)

TO: Two Million Five Hundred Thousand Dollars and 00/100 (\$2,500,000.00)

The INCREASE of said bond penalty shall be effective as of the 29th Day of April, 2022.

Signed, sealed and dated this 8th Day of July, 2022

Federal Insurance Company

SURETY

BY



Debbie Lindstrom, ATTORNEY-IN-FACT

Federal Insurance  
Company

A++

XV

\$2,500,000  
(section 9.3)

Reviewed and approved as to insurance language  
and/or requirements.



Risk Management



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of Washington

County of King

On July 11, 2022 before me, Amber Engel, Notary Public

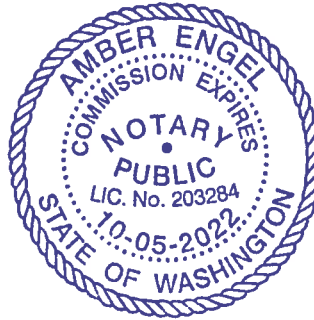
personally appeared Debbie Lindstrom

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature] Notary Public Signature



Place Notary Public Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to the persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document

Document Date Number of Pages:

Signer's Name:

Form with checkboxes for Individual, Corporate Officer, Partner, Guardian or Conservator, Attorney-in-Fact, Trustee, Other. Includes 'RIGHT THUMBPRINT OF SIGNER' box.

Form with checkboxes for Individual, Corporate Officer, Partner, Guardian or Conservator, Attorney-in-Fact, Trustee, Other. Includes 'RIGHT THUMBPRINT OF SIGNER' box.

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Scott C. Alderman, Jamie Armfield, Timothy S. Buhite, Amber Engel, Peggy A. Firth, Brandi Heinbaugh, Debbie Lindstrom, Kathleen M. Mitchell, Roxana Palacios, and Holly E. Ulfers of Seattle, Washington -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 20th day of February, 2020.

*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

*Stephen M. Haney*

Stephen M. Haney, Vice President



STATE OF NEW JERSEY  
County of Hunterdon

ss.

On this 20th day of February, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316885  
Commission Expires July 16, 2024

*Katherine J. Adelaar*

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this July 11th, 2022.



*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:  
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



### City of Garden Grove Compliance Summary Report

Vendor Number	Vendor Name	AM Best Rating	Insurance Carrier	Policy #	Eff. Date	Exp. Date	Coverage
V00401	REPUBLIC SERVICES	Compliant					
		A++g , XV	ACE American Insurance Company	ISAH1073261A	6/30/2022	6/30/2023	Auto Liability
		A++g , XV	ACE Property & Casualty Insurance Company	G46782148006	6/30/2022	6/30/2023	Excess Liability
		A++g , XV	ACE American Insurance Company	HDOG47331067	6/30/2022	6/30/2023	General Liability
		A++p , XV	Tokio Marine Specialty Insurance Company	PPK2432402	6/30/2022	6/30/2023	Pollution Liability
		A++g , XV	Indemnity Insurance Company of North America	WLRC50702145	6/30/2022	6/30/2023	Workers Comp

**Risk Profile :** Disposal Refuse Services

**Required Additional Insured :** Garden Grove Sanitary District, City of Garden Grove, its officers, officials, employees, agents, and volunteers